

A.Sudha vs University Of Mysore & Anr on 6 October, 1987

Equivalent citations: 1987 AIR 2305, 1988 SCR (1) 368, AIR 1987 SUPREME COURT 2305, 1987 (4) SCC 537, 1987 5 JT 29, (1987) 4 JT 29 (SC), (1987) 3 SCJ 320

Author: M.M. Dutt

Bench: M.M. Dutt, Misra Rangnath

PETITIONER:

A.SUDHA

Vs.

RESPONDENT:

UNIVERSITY OF MYSORE & ANR.

DATE OF JUDGMENT 06/10/1987

BENCH:

DUTT, M.M. (J)

BENCH:

DUTT, M.M. (J)

MISRA RANGNATH

CITATION:

1987 AIR 2305

1988 SCR (1) 368

1987 SCC (4) 537

JT 1987 (4) 29

1987 SCALE (2) 699

ACT:

Admission to Medical College-Where a student has obtained admission relying upon information supplied by the head of the institution and later on it turns out that the admission was not in conformity with the University Regulations, the student being innocent, cannot be penalised by not allowing to continue studies.

HEADNOTE:

The appellant, who had passed B.Sc. Examination with Botany, Chemistry and zoology securing 54.7% marks in the aggregate, and, who had passed earlier the P.U.C. examination with Physics, Chemistry and Biology securing 43.1% marks in the aggregate, joined a private medical college after its principal had confirmed in writing that she was eligible for admission to the M.B.B.S. Course. After

six months in the college, she was informed by the principal that her admission had not been approved by the University as she had secured only 43% marks in the P.U.C. examination while the required minimum was 50% according to the Regulations framed by the University. The appellant's writ petition challenging the validity of the cancellation of her admission to the medical college having been dismissed by a Single Judge and her appeal against the same having been rejected by the Division Bench of the High Court, she approached the Court by special leave.

Counsel for the appellant contended inter alia that she was eligible for admission in terms of the Karnataka Medical Colleges (Selection of Candidates for Admission to M.B.B.S.) Rules, 1985, and that in any case, since the appellant had completed the first year M.B.B.S. Course by virtue of interim orders passed by the High Court and this Court, she should be allowed to continue her studies in the M.B.B.S. Course.

Allowing the appeal,

^

HELD: Under Regulation 1(a) of the Regulations of the University regarding admission to M.B.B.S. Course for the Academic year 1985-86, a candidate after passing B.Sc. Examination and seeking admission in the seats reserved for B.Sc. candidates should have secured 50% of the total marks in Physics, Chemistry and Biology in the P.U.C. Exami-

369

nation. It is true that the appellant has obtained 54% marks in the B.Sc. Examination, but she had failed to obtain 50% marks in the aggregate in the PUC Examination in Physics, Chemistry and Biology. In the circumstances, she was not eligible for admission in the First Year MBBS Course. [372H; 373A-B]

There is no substance in the contention made on behalf of the appellant that the Karnataka Medical Colleges (Selection of Candidates for admission to I MBBS) Rules, 1985 would also be applicable to the appellant. Even assuming that the said Rules are applicable to the case of the appellant, still the appellant will not be eligible for admission in the First Year M.B.B.S. Course in view of sub-r. (5) of r. 3 of the said Rules, which provides, inter alia, that a person who does not belong to any of the Scheduled Castes or Scheduled Tribes, has to obtain 50% of marks in P.U.C. Or equivalent examination in Physics, Chemistry and Biology as optional subjects. Thus, the appellant was not eligible for admission. [373H; 374A-B]

On the appellant's query, the Principal of the Institute by his letter dated February 26, 1986 informed her that she was eligible for admission in the First Year M.B.B.S. Course. It was, inter alia, stated in the letter that the candidate should have obtained 50% marks in the optional subjects in the B.Sc. Examination. There is no dispute that the appellant had obtained 54% marks in those

subjects in the B.Sc. Examination. The appellant was, therefore, quite innocent and she was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the M.B.B.S. Course. Prima facie it was the fault of the Principal of the Institute but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission in the M.B.B.S. Course, was on a bona fide interpretation of the Regulations framed by the University, which to some extent suffer from ambiguity. The Regulations should have been more clear and specific. [377C-F]

A.P. Christians Medical Education Society v. Government of Andhra Pradesh, [1986] 2 S.C.C. 667, distinguished. G

Rajendra Prasad Mathur v. Karnataka University, A.I.R. 1986 S.C. 1448, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2598 of 1987.

From the Judgment and order dated 26.5.1987 of the Karnataka A High Court in W.A. No. 615 of 1987.

Dr. Y.S. Chitale and K.J. John for the Appellant. S.S. Javali, Ranjit Kumar and Dev Dass for the Respondents.

The Judgment of the Court was delivered by Dutt, J. Special leave is granted. As elaborate submissions have been made at the preliminary hearing of the special leave petition on the merits of the case by both the parties, we proceed to dispose of the appeal on merits.

This appeal involves the question as to the eligibility of the appellant for admission in the First Year MBBS Course of the Mysore University.

The appellant passed the B.Sc. Examination of the Mysore University with Botany, Chemistry and Zoology securing 54.7% marks in the aggregate. She also passed the PUC in the year 1979 with Physics, Chemistry and Biology as optional subjects and obtained 43.1% marks in the aggregate. She sought for admission in a private Medical College or Institute. On her query, the second respondent, who is the Principal of the Institute, by his letter dated February 26, 1986 confirmed that the appellant was eligible for admission to MBBS Course. The relevant portion of the letter, as quoted in the special leave petition, is extracted below:-

"With reference to your telegram, I wish to write that candidates passing B.Sc. degree examination with Physics, Chemistry and Biology or Chemistry, Biology and Zoology

as optional subjects, are eligible, provided such of these candidates who have passed with Chemistry, Biology and Zoology should have passed Physics as optional subject in II year PUC or equivalent examination (Pre-degree or Intermediate) or the additional Physics examination of any University or Institution recognised by the State Government. The candidate should have obtained 50% marks in the optional subjects in the B.Sc. degree examination."

It is the case of the appellant that on the basis of the said letter, she joined the Institute in February, 1986. However, by Memo dated September 19, 1986 the second respondent intimated the appellant that her admission had not been approved by the University of Mysore. The relevant portion of the letter of the Registrar of the University of Mysore, as quoted in the said Memo, is given below:-

"She has secured 54% in B.Sc., but secured 43% in PUC. Hence she is not eligible. Her admission may be cancelled. "

The appellant moved the Karnataka High Court by filing a writ petition under Article 226 of the Constitution of India challenging the validity of the cancellation of her admission in the First Year MBBS Course and praying for an order directing the respondents to allow her to continue as a student of the First Year MBBS Course.

A learned Single Judge of the High Court by his judgment dated April 8, 1987 rejected the writ petition on the ground that the appellant not having obtained 50% marks in the aggregate in Physics, Chemistry and Biology in the PUC examination, was not eligible for admission to the MBBS Course. On appeal by the appellant, the Division Bench of the High Court also took the same view and dismissed the appeal. Hence the present appeal by special leave.

The Mysore University to which the Institute or College is affiliated has framed regulations regarding admission to MBBS Course for the academic year 1985-86. The relevant provisions of the said regulations are extracted below:-

" 1. ADMISSIONS-ELIGIBILITY:

(a) The candidate shall have passed the Two Year PUC Examination conducted by the PUC Board, Karnataka State with Physics, Chemistry and Biology as optional subjects or any other examinations recognised as equivalent by the Mysore University and/or shall have passed the competitive examination conducted by the Karnataka Government for this purpose.

or B.Sc. Examination of an Indian University provided that he has passed the B.Sc. Examination with not less than two of the following subjects:

Physics, Chemistry, Biology (Botany, Zoology) and further that he has passed the earlier qualifying examinations with the following subjects:

Physics, Chemistry, Biology and English. Provided that the candidate should have secured not less than 50% of the total marks in Physics, Chemistry, Biology subjects taken together at the qualifying and/or competitive examination. Provided further that in respect of candidates belonging to Scheduled Caste/Scheduled Tribe the minimum marks required for admission shall be 40% in lieu of 50% for general candidates.

(b) The candidate should have completed 17 years on the 31st December of the year of admission. "

Under Regulation 1(a), a candidate having passed the Two-Year PUC or equivalent examination with Physics, Chemistry and Biology as optional subjects or B.Sc. Examination of an Indian University with Physics, Chemistry, Biology will be eligible for admission in the First Year MBBS Course subject to this that the candidate should have secured not less than 50% of the total marks in Physics, Chemistry and Biology taken together at the qualifying and/or competitive examination. It follows, therefore, that a candidate has to secure 50% of the total marks in Physics, Chemistry and Biology taken together in the PUC or an equivalent examination, which is a condition precedent to her eligibility for admission in the First Year MBBS Course. The High Court has rightly observed that as the appellant did not secure 50% of the total marks in Physics, Chemistry and Biology in the PUC Examination, she was not eligible for admission in the First Year MBBS Course also rightly overruling the contention of the appellant that the marks obtained by her in Physics in the PUC Course should be added to the marks obtained by her in the B.Sc. Examination so that it would work out to 50% of the tot. marks in Physics, Chemistry and Biology.

Under Regulation 1(a), a candidate after passing B.Sc. Exami-

nation and seeking admission in the seats reserved for B.Sc. candidates has to secure 50% of the total marks in Physics, Chemistry and Biology in the PUC Examination. It is true that the appellant has obtained 54% marks in the B.Sc. Examination, but she had failed to obtain 50% marks in the aggregate in the PUC Examination in Physics, Chemistry and Biology. In the circumstances, she was not eligible for admission in the First Year MBBS Course. We are afraid, the Karnataka Medical Colleges (Selection of Candidates for Admission to 1 MBBS) Rules, 1985, hereinafter referred to as 'the said Rules', are not applicable to seats in Private Colleges other than Government seats, which is apparent from Sub-rule (2) of rule 1. Sub-rule (2) of rule 1 provides as follows:-

"R.1(2)-These rules shall be applicable to the selection of candidates made on or after the date of commencement of these rules, for admission to the I year MBBS Course in the State of Karnataka in respect of all the seats in Government Colleges and the Government seats in the Private Colleges, as indicated in the Schedule to these Rules."

Dr. Chitale, learned Counsel appearing on behalf of the appellant, has placed much reliance upon the Government Order dated August 1, 1984 annexing a copy of the said Rules. The relevant portion of the Government Order is as follows:-

"O R D E R Accordingly, after considering the matter, Government of Karnataka hereby direct that Rules for selection of candidates for admission on to I M.B.B.S. Course in the Government and Private Medical Colleges for the academic year 1985-86 and onwards shall be as in Annexure to this order."

In the Government order, no doubt, Private Medical Colleges have been mentioned, but it does not follow that the said Rules would apply to all candidates in the Private Medical Colleges. Sub-rule (2) of rule 1 of the said Rules, which has been extracted above, clearly shows that the said Rules would apply to only Government seats in the Private Colleges and, as such, in the Government order Private Colleges have been mentioned. There is, therefore, no substance in the contention made on behalf of the appellant that the said Rules would also be applicable to the appellant.

Even assuming that the said Rules are applicable to the case of A the appellant, still the appellant will not be eligible for admission in the First Year MBBS Course in view of sub-rule (5) of rule 3 of the said Rules, which provides, inter alia, that a person who does not belong to any of the Scheduled Castes or Scheduled Tribes, he has to obtain 50% of marks in PUC or equivalent examination in Physics, Chemistry and Biology as optional subjects. Thus, the appellant was not eligible for admission in the First Year MBBS Course of Mysore University. The High Court was, therefore, right in overruling the contention of the appellant that she was eligible for admission in the First Year MBBS Course.

Now the question is whether the appellant should be allowed to continue her studies in the MBBS Course. By virtue of the interim order of the High Court, the appellant completed the First Year MBBS Course and by virtue of the interim order passed by this Court, the appellant appeared in the First Year MBBS Examination. It has been strenuously urged by the learned Counsel appearing on behalf of the University that as the appellant was not eligible for admission and was illegally admitted by the Institute in violation of the eligibility rules of the University, the appellant should not be allowed to continue her studies in the MBBS Course under the University. In support of that contention, much reliance has been placed by the learned Counsel on a decision of this Court in A.P. Christians Medical Educational Society v. Government of Andhra Pradesh, [1986] 2 SCC 667. What happened in that case was that the appellant-Society without being affiliated to the University and despite strong protests and warnings of the University admitted students to the Medical College in the First Year MBBS Course in total disregard of the provisions of the A.P. Education Act, the Osmania University Act and the regulations of the Osmania University. Some students, who were admitted to the Medical College, filed a writ petition before this Court. While dismissing the writ petition of the students, this Court observed as follows:-

"Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interest of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the student. Any direction of the nature sought by Shri Venu gopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more

destructive of the rule of law than a direction by the court to disobey the laws."

It was further observed by this Court as follows:-

"We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time."

It appears from the observations extracted above that the students were themselves to blame, for they had clear knowledge that the College was not affiliated to the University and in spite of the warning of the University they sought for the admission in the College in the First Year MBBS Course and were admitted. In that context this Court made the above observations.

We may refer to a later decision of this Court in *Rajendra Prasad Mathur v. Karnataka University*, AIR 1986 SC 1448. In that case, the condition for eligibility for admission to B.E. Degree Course of the Karnataka University was that the students seeking admission should have passed the two-year pre-University Examination of the pre- University Education Board, Bangalore, or an examination held by any other Board or University recognised as equivalent to it. The appellants, in that case, were admitted to certain private Engineering Colleges for the B.E. Degree Course upon payment of capitation fees, although they were not eligible for admission as the Higher Secondary Examination held by the Secondary Education Board, Rajasthan, passed by some of the appellants and the first B.Sc. Examination of Rajasthan and Udaipur University passed by the remaining appellants, were not recognised as equivalent to the two-year pre-University Education Board, Bangalore. While dismissing the appeals of the students on the ground that they were not eligible for admission in the engineering colleges, Bhagwati, C.J. who delivered the judgment of the Court, observed as follows:-

"We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur Universities was

recognised as equivalent to the Pre-University Examination of the Pre- University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principal of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would, therefore, notwithstanding the view taken by us in this judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission. But we do feel that against the erring Engineering Colleges the Karnataka University should take appropriate action because the managements of these Engineering Colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the Engineering Degree Course. We also endorse the directions given by the learned Judge in the penultimate paragraph of his judgment with a view to preventing admission of ineligible students."

This Court was, therefore, of the view that as the students were innocent and were admitted to the Colleges for the sake of capitation fee in some cases, they should not be penalised and should be allowed to continue their studies in the respective Engineering Colleges in which they were granted admission.

The facts of the instant case are, more or less, similar to the Rajendra Prasad Mathur's case (supra). It has been already noticed that on the appellant's query' the Principal of the Institute by his letter dated February 26, 1986 informed her that she was eligible for admission in the First Year MBBS Course. It was, inter alia, stated in the letter that the candidate should have obtained 50% marks in the optional subjects in the B.Sc. Examination. There is no dispute that the appellant had obtained 50% marks in those subjects in the B.Sc. Examination. The appellant was, therefore, quite innocent and she was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute in the said letter in regard to the eligibility of the admission in the First Year MBBS Course. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the MBBS Course. Prima facie it was the fault of the Principal of the Institute but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission in the MBBS Course, was on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS Course for the academic year 1985-86, which to some extent suffer from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajendra Prasad Mathur's case (supra) while we dismiss the appeal, we direct that the appellant shall be allowed to prosecute her studies in the MBBS Course, and that her result for the First Year MBBS Examination be declared within two weeks from date.

There will, however, be no order as to costs.

H.L.C.

Appeal allowed.