Gurdeep Singh vs State Of Jammu And Kashmir And Others on 5 March, 1993

Equivalent citations: AIR1993SC2638, 1997(5)SCALE222, 1995SUPP(1)SCC188, AIR 1993 SUPREME COURT 2638, 1993 AIR SCW 3420, 1995 SCC (SUPP) 1 188, 1995 SCC (L&S) 378, (1995) 29 ATC 149, (2001) 163 TAXATION 385, (2001) 166 CURTAXREP 502, (2001) 247 ITR 810, (2002) 124 TAXMAN 488, 2002 (9) SCC 476

Bench: M.N. Venkatachaliah, Yogeshwar Dayal

JUDGMENT

1. We have heard Sri D.D. Thakur, learned senior counsel for the appellant and Sri Ashok Mathur, learned Counsel for the State of Jammu and Kashmir. However, respondent No. 6, though duly served, has chosen to remain unrepresented. Special leave granted.

2. The appellant, a certain Gurdeep Singh, was a candidate for admission to the Course leading to a Medical Degree for the year 1991-92 in the State of Jammu and Kashmir. He claimed to be entitled for selection against the three per cent reservations for "sports category". In his writ petition before the High Court he claimed that his legitimate entitlement for selection against the category was wrongfully denied to him and that respondent No. 6, a certain Shuab Omer, was selected-and if the appellant's case is true-by a process of sheer manipulation. The High Court dismissed his writ petition on what the appellant avers a misconception of appellant's case.

We are afraid, the grievance made out by the appellant against the dismissal of his writ petition is justified. We are of the view that the order dated 10-8-1992 of the High Court dismissing the. appellant's writ petition cannot be sustained. The appellant for the reasons we shall set out presently, is entitled to succeed in the writ petition.

3. The factual antecedents are these:

> The authorities concerned with the administration of medical admissions in the State of Jammu and Kashmir issued a notification dated 19th July, 1991 inviting applications for admission to the entrance examination for selection of candidates for the Medical Courses. Three per cent of the intake, said to amount in all to six seats, was reserved for the candidates excelling in certain categories of sports specifically notified as approved sports. At the relevant time "mountaineering" said to be the field of expertise of respondent No. 6, was not one of them. The entrance examinations were conducted on the 14th September, 1991 and the official results came out on the 26th September, 1991. I would appear that there were controversies as. to some of the questions not being within the syllabi and a fresh list of selected candidates was

published on 11th October, 1991. In the said examination, both the appellant and respondent No. 6 are said to have secured 118 marks each. It would appear that if there was such a tie, the provisions regulating admissions contemplated a preference in favour of a candidate who had secured higher marks in Biology in the 12th standard examination. Respondent No. 6 was accordingly selected. But if respondent No. 6 had no eligibility for the reserved seats in the sports category then the appellant alone was to be selected.

4. The eligibility in the sports category was, it is stated, determined by the Sports Council of Jammu & Kashmir. The Council invited applications on the 18th September, 1991 for the purpose; conducted interviews in that behalf on 24th of September, 1991 and declared 46 students as eligible under that category. It is significant that while appellant was one the of the candidates considered eligible in that category, respondent No. 6 was not so included. It is also pertinent that at the time the selections by the Sports Council were made, the sporting activity of the appellant was one of the approved sports while that of respondent No. 6 namely "mountaineering" was not so included in the approved sports. That explains how respondent No. 6 did not offer himself for selection in that category and why the Sports Council did not include his name in the list of eligible candidates.

On the basis of the eligibility declared by the Sports Council, the appellant would, in the normal course, have been entitled to admission against the sports category. But on 7th November, 1991 long after the Sports Council had announced its selections, the Council allegedly at the instance of the Mountaineering Association sought to recognise "mountaineering" as an additional sports activity. There was only one candidate in this category and that was respondent No. 6. The grievance of the appellant that the whole exercise was to accommodate respondent No. 6, becomes difficult to brush aside. Upon such an exercise which had the effect of retrospectively introducing an additional eligibility criterion in the snorts category, respondent No. 6, was picked up and selected.

5. When this selection was challenged before the High Court, the High Court understood the contention of the appellant to amount to a plea that the mountaineering, by itself, was not an activity eligible to be recognised as a sporting activity. That was not the real question. The question was not that "mountaineering"-had it been in the original list of approved sports-was not eligible to be called a legitimate sporting activity. The real question was rather that such a sport not having been included in the list of approved sports at the cut-off date when the applications were invited and on the basis of which candidates responded, could not later be introduced to provide eligibility retrospectively to a single candidate. That "mountaineering" could be such a sport, was not disputed, but what was urged was that after the list of sports for purposes of eligibility under the sports category had been determined and after the selections were made, only in order to accommodate respondent No. 6 a new sporting activity was included and respondent No. 6 chosen on that basis. It is also pointed out that "mountaineering" was included as an approved sporting activity for that year alone and that it was promptly deleted in the subsequent year. The appellant's contention was that the authorities had clearly acted on the basis : "show me the man, I will show you the rule".

6. The High Court did not appreciate appellant's contention in the proper perspective. The High Court said:

> The petitioner has obtained 118 marks, exactly the same marks as obtained by respondent No. 6. The petitioner and respondent No. 6 both having obtained 118 marks, whereas respondent No. 6 admitted, the petitioner was denied the admission. The petitioner's further contention is that "Mountaineering" was not a sport originally included in the list of Sports, but was wrongly included at the last moment to accommodate respondent No. 6.
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> So far as the alleged wrong inclusion of "Mountaineering" in the category of sports, is concerned, we are not convinced with the argument of Mr. Thakur. It was for the Sports Council to decide about the inclusion or non-inclusion of any particular sport for the purposes of according consideration in the sports category, and if the Sports Council in its wisdom decide to include "Mountaineering" as a sport for this purpose, nothing illegal or unconstitutional can be said to have happened about such action of the Sports Council. We also have no doubt in our mind that there is no law or rule prohibiting the Sports Council from taking such decision. In fact, we may even observe that based on general prudence and commensense, one cannot find fault with someone terming "mountaineering" as a Sport.
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> As pointed out earlier, it was not the eligibility or quality of this sport for inclusion or non-inclusion that was in question. The question was whether having regard, to the stage at which and the manner in which it came to be included, it was permissible. That apart, both at the time of sending-up their applications for entrance examination as well as at the time the candidates offered themselves for selection before the Sports Council, the candidates were to set out the specific basis of their claims for inclusion in the sports category and furnish the requisite certificates. We are told that the further requirement was that the qualification for such eligibility should have been acquired prior to the 12th standard examination. In the case of respondent No. 6, it is stated that he acquired the sports qualification long after he had passed the 12th standard examination. Then again, the inclusion of mountaineering as an approved sporting activity at that stage denied the other candidates, who might have had similar eligibility, an equal opportunity to compete.

7. The contention of the appellant, therefore, that the whole exercise was gone through for the benefit of one candidate, namely respondent No. 6, is difficult to discount. In all 'probability, this was the purpose of the whole exercise. From these facts and circumstances, the conclusion becomes irresistible that the whole exercise of the Sports Council in recognising mountaineering as an approved sport on 4th November, 1991 and recommending the candidature of respondent No. 6 on 7th.Nove-mber, 1991 was geared up only for achieving the ulterior objective of accommodating respondent No. 6. It was not proper for the selecting authorities to have accepted that recommendation and considered respondent No. 6 as eligible under that category.

8. In the result, we find that the denial of the seat to the appellant in the sports category, cannot be justified. As respondent No. 6 was not eligible, there was no question of a tie. Appellant should now be given the seat. By an earlier interlocutory order, a seat had been directed to be kept vacant for appellant's benefit in the event of his success. We direct the authorities to admit appellant to the course within two weeks from today. We, therefore, allow this appeal, set aside the order dated 10th August, 1992 of the High Court and grant the reliefs claimed in the writ petition.

9. What remains to be considered is whether the selection of respondent No. 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of respondent No. 6 in the sports category was, on the material placed before us thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion is misuse of power. While we have sympathy for the predicament of respondent No. 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent No. 6. We do so though, however, reluctantly.

10. The appeal is accordingly allowed. The appellant shall be entitled to his costs from the State. We quantify the Advocate's fee at Rs. 5,000/-.