

Aditya Kumar Singh

Vs

The Principal, Rajendra Medical College, Ranchi and Others

Civil Appeal No. 2298 of 1970

(J. M. Shelat, V. Bhargava, I. D. Dua JJ)

17.03.1971

JUDGMENT

DUA, J. -

1. This appeal has been presented to this Court pursuant to a certificate granted by the Patna High Court under Article 133(1)(c) of the Constitution.

2. The appellant, Aditya Kumar Singh, passed the B.Sc., Part I examination of the Bhagalpur University from the I.N.B. Collage in 1964 with Chemistry, Botany and Zoology as principal subjects and Physics as an extra subject. In 1967 he passed the B.Sc., examination of the Magadh University with Honours in Zoology. Thereafter he applied for admission to the Rajendra Medical College, Ranchi. Along with his application he attached a marks-sheet of the B.Sc., Part I examination of the Bhagalpur University purporting to have been issued to him by that University as also the marks sheet of B.Sc., (Hons) examination of the Magadh University. In March, 1968 he was admitted to the First Year of the M.B.B.S. Course of that College. On January 21, 1969 the appellant was served with a notice dated January 20, 1969 from the Principal of Rajendra Medical Collage, Ranchi calling upon him to show cause why his made should not be struck off the College rolls on the ground that the marks-sheet of B.Sc., Part I examination submitted by him along with his application for admission to the collage was not genuine and that he had gained admission to the College by fraudulent means. The reply to this notice was required to be submitted latest by January 27, 1969. The appellant sent his reply on February 1, 1969. This reply was not considered satisfactory and on February 4, 1969 the Principal of the College informed him accordingly, adding that from the record of marks received from the University of Bhagalpur it had been found that the appellant had not passed in Physics which he had offered as an extra subject in the B.Sc., Part I examination and as such he did not satisfy the minimum qualification laid down for admission to the College, with the result that he could not be allowed to continue his studies in the College, with the result that he could not be allowed to continue his studies in the College. If the appellant had any further representation to make he was asked to do so by 11 a.m. on February 12, 1969. The Principal of the College passed an order on February 27, 1969 striking off the appellant's name from the College roll. On March 11, 1969 the appellant filed in the Patna High Court an application under Article 226 of the Constitution [Writ Petition 219 1969, decided on December 8, 1969 (Pat)] for a writ of certiorari praying for quashing the order of the Principal dated February 27, 1969 and for a writ of mandamus commanding the Principal not be enforce the said order and also not to interfere with the appellant's right to prosecute his studies in the Rajendra Medical College. The appellant impleaded in this writ petition the Principal of Rajendra Medical College as respondent No. 1 and the State of Bihar through Secretary, Department of Health as respondent No. 2 Neither respondent filed any counter-affidavit and respondent No. 1 was not even represented by a counsel. The facts

stated in the writ petition were accordingly taken by the High Court as correct. This writ petition was allowed by a Division Bench of the Patna High Court on December 8, 1969. The final conclusions of the Court were expressed by Wasiuddin, in J., in these words :

"On a consideration of all these facts, it is abundantly clear that there was a violation of the principle of natural justice and the petitioner had not been given full opportunity of placing his case and the petitioner must have also found himself bewildered by the receipt of the order dated the 27th February, 1969 when the Second show cause notice showed that action was being taken only on account of the petitioner not satisfying the minimum qualification for admission into the Rajendra Medical College. There can be no doubt that action could have been taken against the petitioner if it had been found that the petitioner was responsible for the inflation and interpolation of the marksheet, but for this there should have been due and proper inquiry in which the petitioner should have been given full opportunity of being heard. But it appears that no such opportunity was given and there was thus a violation of the principle of natural justice. In this connection, I may also refer here to two decisions, one of which is of Supreme Court reported in the case of Board of High School and Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta and Other (AIR 1962 SC 1110) where the petitioner of that case had been debarred from appearing at the examination and it was held that the authorities had violated the principle of natural justice. There is also a Division Bench decision of our High Court (AIR 1964 Par 291). Ajit Singh and Other v. Ranchi University and Others in this connection which no doubt is also in respect of examination, but there also the same principle as laid down in the Supreme Court decision has been followed".

It appears that the Principal of the Rajendra Medical College had made routine inquiries from the Assistant Registrar of the Bhagalpur University about the marks obtained by the students admitted in the College who had passed the B.Sc., Part I examination from that University. On December 12, 1968 the Assistant Registrar of the University wrote to the Principal in reply to his letter of December 3, 1968 stating inter alia that Shri Aditya Kumar Singh (the appellant) had secured 5 marks in Physics practical and not 15. This statement was stated to have been verified by the Assistant Registrar (Shri H. N. Rai) and Dr. K. P. Singh of Rajendra Medical College. It may be recalled that the appellant had been required in the Principal's letter of February 4, to make whatever further representation the appellant desired to make by February 12, 1969. Presumably after waiting till February 12, the Principal on February 13, 1969 requested the Assistant Registrar of Bhagalpur University to hold further investigation in the matter of marks obtained by the appellant. On February 22, 1969 the Assistant Registrar wrote back to the Principal the following letter :

"Dear Dr. Mitra,

With reference to your D.O. letter No. 958/RMC dated the 13th February, 1969 I am to inform you that necessary investigation into the matter has been made. It has been verified and found that Shri Aditya Kumar Singh Roll No. 340 (a candidate for the Annual B.Sc., Part I examination 1964) obtained only 5 (five) marks in Physics practical and not 15 (fifteen) as stated previously.

# Yours sincerely, (Sd.) H. N. Rai, Assistant Registrar.##

It appears that the first M.B.B.S Examination was to begin on November 21, 1969. On October 9,

1969 the principle forwarded the appellant's form for admission to that examination along with his fee. The Principle, however, did not append his signatures on the form. He stated his reasons for not doing so in the covering letter in which he wrote :

"It was apparent from the marks-sheet that he had passed in Physics also. Subsequent to this he passed B.Sc. Final Examination from Bihar University in the year 1966 with Chemistry, Botany and Zoology. Thereafter he passed B.Sc., Hons. examination in Zoology in the year 1967 from Magadh University. Since he had passed B.Sc., Hons. in Zoology after having passed B.Sc., I with Chemistry, Biology and Zoology and apparently Physics also he was given preference over B.Sc., I candidates and admitted straightaway."

After briefly narrating the history resulting in the appellant's name being struck off, the letter continued :

"Advice was sought (through the Health Department) from the Standing counsel of Government (in the absence of the Advocate General) and I have been advised that he should not be debarred from my end from appearing at the examination. I am, therefore sending his form and fees but I am unable to certify that he has passed in Physics at B.Sc., I level as is required to be done on the admission form. This is because the very University from which he had appeared at the B.Sc., I Examination has declared that he had not passed in Physics. I am enclosing copies of documents mentioned hereinunder for your perusal and consultation with legal advisors of the University if deemed necessary. I am further to state that he has fulfilled the rest of the conditions which are required to be certified by the Principal on the Admission form."

With this letter were also enclosed copies of the writ petition, the order of the High Court and the correspondence which had passed between the Principal and the Government on the subject. On receipt of this letter the Deputy Registrar, Ranchi University returned the form on October 28, 1969 stating that the appellant could not be permitted to appear at the first M.B.B.S., Examination. Apparently on learning of this position the appellant also wrote to the Principal complaining against his refusal to give to the appellant a "good conduct certificate". The Principal replied to the appellant on November 1, 1969 stating all the facts and denying that he had debarred the appellant from appearing in the first M.B.B.S., Examination. It was explained in this letter that he (the Principal) was unable to certify that the appellant had passed in Physics at B.Sc., Part I level and it was for this reason that he had not signed a certificate to that effect. The Principal repeated his durability to certify that the appellant had passed in Physics. A copy of this letter was forwarded to the Vice-Chancellor, Ranchi University, with reference to the letter dated October 28, 1969 from the Deputy Registrar.

3. On November 4, 1969 the appellant filed an application in the Patna High Court for taking contempt proceedings against the Principal of Rajendra Medical College. On November 14, 1969 a Division Bench of the Patna High Court considered this application but found no justification for contempt proceedings against the Principal. It, however, directed the Principal to certify to the University that the appellant had passed B.Sc., Part I Examination in Physics as shown from the College record. It was added that since the matter of the appellant have in passed the B.Sc., Part I Examination in Physics was under investigation it should also be noted that the certificate must be deemed to be provisional and in case it was established that the appellant had not passed the B.Sc.,

Part I Examination in Physics then his admission to the First M.B.B.S., examination of Ranchi University would be treated as cancelled. After this order the Principal on November 20, 1969 sent to the Vice-Chancellor, Ranchi University the appellant's form with his certificate as directed by the High Court along with a copy of that court's order.

4. On November 22, 1969 the Registrar of the University under directions of the Vice-Chancellor wrote back to the Principal informing him that the High Court had not issued any directive to the University to allow the appellant to appear at the ensuing first M.B.B.S., Examination of 1969. The letter proceeded to state that the question whether the appellant had passed B.Sc., Part I Examination in Physics was still under investigation and in the opinion of the Vice-Chancellor the appellant was not eligible to appear at the first M.B.B.S., Examination of 1969. The appellant thus could not take the examination held on November 21, 1969. After the decision of the High Court on December 8, 1969 in previous writ petition [No. 219 of 1969 (Pat)], the appellant applied to the Vice-Chancellor, Ranchi University on January 22, 1970 seeking permission to appear in the M.B.B.S., Examination scheduled to be held from March 2, 1970. A copy of the order of the High Court dated December 8, 1969 was also forwarded to the Vice-Chancellor. On February 14, 1970 the Registrar of the University informed the appellant that he had to qualify himself in accordance with the relevant regulations for being admitted to the first M.B.B.S., Examination. The appellant was accordingly advised to furnish proof that he had passed in Physics at the B.Sc., Part I Examination. On February 21, 1970 the appellant wrote to the Vice-Chancellor saying that as the M.B.B.S., Examination was scheduled to commence on March 2, 1970 the time at his disposal was too short to enable him to furnish proof of his having passed in Physics at the B.Sc., Part I Examinations required by the University. He also referred to the marks-sheet said to have been furnished to him by the Bhagalpur University which he had already supplied and to the order of the High Court dated December 8, 1969. A request was made to permit him at least to sit at the examination provisionally and, if necessary, to withhold his result pending the completion of the enquiry by the University. In the meantime it appears that in view of the examination scheduled to be held from March 2, 1970 and apprehending that the appellant would claim to sit at this examination the Principal of the Rajendra Medical College applied to the Patna High Court of February 9, 1970 under Section 151, C.P.C. stating that the counsel apprehending for the State in the High Court in Writ Petition No. 219 of 1969 had somehow failed to file a counter-affidavit explaining the full factual position. This was stated to be due to the fact that the correspondence between the Advocate-General of the State and the Principal had remained unnoticed by the counsel. In the background of this position the Principal sought directions from the High Court as to how he required to implement the Court's order in the matter of attesting the appellant's application for permission for permission to take the first M.B.B.S., Examination. On this application the High Court recorded the following order on February 11, 1970 :

"Heard both sides. Let a provisional certificate be granted in terms of our order dated 14-11-69."

On February 25, 1970 the Registrar of the Ranchi University informed the appellant that he was not eligible to appear at the ensuing first M.B.B.S. Examination in 1969 (Special) scheduled to be held from March 2, 1970. On receipt of this letter the appellant, on February 26, 1970, presented a writ petition in Patna High Court under Article 226 of the Constitution which has given rise to the present appeal. The appellant obtained a rule against the respondent to show cause why -

(i) they be not directed to implement the directions of the High Court contained in the judgment in Civil Writ 219/69 forth with;

(ii) a writ in the nature of a writ of mandamus be not issued commanding them to permit the petitioner to appear at the supplementary M.B.B.S. Examination of the Ranchi University commencing from March 2, 1970;

(iii) an appropriate writ or order be not issued quashing the order contained in the letter of the University dated February 14, 1970;

(iv) the respondents be not punished for contempt of the High Court.

The five respondents impleaded in this writ petition were -

(1) Principal, Rajendra Medical College, Ranchi;

(2) State of Bihar;

(3) Deputy Registrar, Ranchi University;

(4) Vice-Chancellor, Ranchi University; and

(5) University of Ranchi through its Registrar.

When the writ petition came up for preliminary hearing the Counsel for the appellant did not press the prayer for the taking contempt proceeding. After admitting the writ petition the Court stayed the operation of the order contained in the letter of the University dated February 14, 1970 and also directed the respondent No. 1 (the Principal) to certify forthwith in the prescribed form that the appellant had passed B.Sc., Part I Examination with Physics. Shri Sarwar Ali, counsel for the Principal, undertook to inform his client so as to ensure compliance with this direction. Respondent No. 5 (the University of Ranchi) was also directed to permit the appellant to sit at the M.B.B.S., Part I Supplementary Examination. The appellant's result was not to be published till after the disposal of the writ petition. On July 24, 1970 the writ petition was dismissed by the High Court on the finding that the appellant had not passed B.Sc., Part I Examination in Physics and that the University authorities were not bound to admit the appellant to M.B.B.S., Part I Examination without his fulfilling the requirements contained in Regulation 5 of Chapter XVIII of the Regulations of the University.

5. In this Court Shri V. S. Desai took us through the relevant facts and after giving the history of the case he strenuously contended that the High Court was in error in dismissing the appellant's writ petition. The learned Counsel contended that the earlier decision of the High Court in writ petition No. 219 of 1969 was conclusive and binding on the parties and it was not open to the respondents to go behind that decision. This submission is unacceptable. To begin with in the earlier petition only the Principal of the Rajendra Medical College and the State of Bihar were impleaded as parties. It is unfortunate that in those proceedings the respondents did not file any counter-affidavit and the Principal of the College was not even represented by a counsel with the result that no arguments were addressed on his behalf. The fact, however, remains that nothing said in that decision can bind the University and now it is the University which is primarily objecting to the appellant's eligibility to take the First M.B.B.S., Examination on the ground that he has not complied with Regulation 5 of Chapter XVIII of the University Regulations. It was contended by Shri Desai that the Principal should have given the certificate as directed by the High Court in the previous decision and the Counsel added that if that had been done the appellant would not have found it necessary to have found it necessary to have resort to the present writ proceedings.

6. This submission ignores the fact that the Principal had actually complied with the order of the High Court in the earlier case. He, however, also in addition disclosed all the other relevant facts which he was, in our view, entitled to do. Besides, the question directly raised in the previous case was confined to the grievance relating to violation of the principle of natural justice as the appellant had not been given adequate opportunity of placing his case before the authorities. He was accordingly held entitled to an opportunity to show cause against the action sought to be taken against him so as to satisfy the requirements of the rule of natural justice. The appellant, as the facts noted earlier in this judgment show, was given notice to show that he had actually passed in physics as claimed by him. The previous decision is thus of no assistance to the appellant in the present case.

7. The point of *res judicata* was also urged in the High Court and indeed it was in the forefront of the arguments addressed in that Court on behalf of the appellant. After noting the fact that in spite of the instructions from the Principal to the Health Department of the Bihar State Government to forward the Principal's version of the Advocate-General's Office neither counter-affidavit was filed nor were any arguments addressed in the High Court on his behalf in the earlier case. The High Court in the present case observed that the decision in the earlier writ petition would nevertheless be binding on the Principal but it could not bind the Ranchi University. The law laid down in the earlier case was, however, held to constitute a binding precedent for the Court to follow in the present case. The previous decision was held to be confined only to the question of removal of the appellant's name from the roll of the Collage in violation of the principles of natural justice inasmuch as proper opportunity was not afforded to him to meet the charge that he was responsible for submitting the inflated marks-sheet. After adverting to the facts to the facts of the case the High Court observed;

"We do not want to make any observation in this case in regard to the case of the respondents at some of the stages that really the figure '1' before the figure '5' in figure '15' was an interpolation in different ink. Because that matter was not finally investigated as the previous judgment shows, by following the principles of natural justice. But this much is clear now that the petitioner had not passed B.Sc., Part I Examination in Physics as he had got only twenty eight marks in Physics (five in Practical and twenty-three in theoretical) and had submitted a marks-sheet along with his admission application form which, to say the least, was not correct. Whoever may have been responsible for showing the inflated mark but surely the user of this marks-sheet was the petitioner and to his advantage."

When confronted with this position the learned Counsel, after making a faint but unsuccessful attempt to persuade us to go into the facts and come to our own conclusions, confined his submission to a very narrow point. He submitted that since the appellant has attended the College regularly and has also been permitted, though provisionally, to sit at the University Examination he should be given an opportunity of showing to the University authorities that he had in fact passed in Physics at the 4 B.Sc., part I Examination from Bhagalpur University. According to his submission the High Court should not have given a final decision on this point when the question of interpolation of figure '1' in the marks-sheet has been left open.

8. The High Court has undoubtedly observed in the impugned order that the appellant had neither in the earlier writ petition nor in the present writ petition nor in any of his affidavit in reply stated that he had as a matter of fact passed in Physics at B.Sc., Part I Examination from Bhagalpur University. On the other hand the appellant throughout insisted on basing his claim on the marks-sheet which he

had attached with the admission form and which had been held not to be genuine. The High Court, while dealing with the question of equitable estoppel, again observed :

"It will bear repetition to say that the petitioner who had not undisputedly now passed B.Sc., Part I Examination with Physics but by making use of wrong mark sheet had led the Principal to admit him, is not entitled to invoke the principal of estoppel against the University."

The learned Counsel for the appellant was not able to point out any material on the record from which it could be shown that that High Court is wrong in making these observations and that the appellant had at any stage asserted that as a matter of fact he had passed in Physics as contended. We are, therefore, unable to find any error in the impugned order.

9. In the High Court it was not the appellant's case that he should be allowed an opportunity to show that he had actually passed in Physics as is now prayed by his Counsel. Indeed, all along he was being asked to furnish proof of his having so passed in Physics. Since no such plea was raised in the High Court we are unable to make any order in the terms suggested by Shri Desai. In case, however, he is in a position to furnish proof of this fact he may approach the authorities concerned. It was the appellant himself who had without furnishing any such proof rushed to the Court with a misconceived prayer. The appeal must fail and is dismissed with costs.

</html