

Kurukshetra University and Another

Vs

Jyoti Sharma and Others

Mukesh Kumar

Vs

Kurukshetra University and Others

Civil Appeals Nos. 4890-91 of 1998

(Dr. A.S. Anand, D. P. Wadhwa JJ)

18.09.1998

JUDGMENT

D. P. WADHWA, J.

1. Leave granted.

2. Both the appeals are against the judgment dated 11-12-1997 of the Division Bench of the Punjab and Haryana High Court. By the impugned judgment, the High Court allowed the writ petition of Jyoti Sharma, filed under Article 226 of the Constitution, seeking admission to M.Sc. (Zoology) in Kurukshetra University (for short "the University") for the Academic Year 1997-98 and for cancelling the admission of Mukesh and Sunaina to the same course. Both the University and Mukesh felt aggrieved and have filed these appeals. In the appeal filed by the University, the respondents are Jyoti Sharma, Mukesh and Sunaina while in the appeal filed by Mukesh, the respondents are the University, Jyoti Sharma and Sunaina. When special leave petitions came up before this Court on 6-4-1998, it was pointed out by the University that three seats in M.Sc. (Zoology) in the University were still vacant and that all the three students, namely, Mukesh, Sunaina and Jyoti Sharma could be permitted to attend the classes and appear in the examination subject, of course, and without prejudice to the rights of the parties in these appeals. These three students are continuing their studies in the subject. Thus the appeals would, therefore, appear to be rather more of academic interest but then since the High Court held that the Vice-Chancellor of the University could not have exercised powers under subsection (5) of Section 11 of the Kurukshetra University Act, 1986, (for short "the Act") while granting admission to Mukesh and Sunaina, who were in the merit list at Serial Nos. 1 and 26 and had cancelled their admission and instead directed admission of Jyoti Sharma, who was in the merit list at Serial No. 30, two questions have arisen for our consideration (1) if the Vice-Chancellor was justified in invoking his powers under Section 11(5) of the Act, and (2) could the High Court direct admission of Jyoti Sharma, who was lower in the merit list, without giving opportunity to other candidates higher in order of merit ?

3. To answer these questions, we may examine how the controversy arose which lead Jyoti Sharma to approach the High Court. For admission to g various courses including M.Sc. (Zoology) for the Academic Year 1997-98 the University issued Handbook of Information (Handbook) giving the

background of the University and prescribing admission procedure including eligibility conditions. It was, however, made clear in the Handbook that nothing contained therein should be construed to convey sanction or cited as an authority for which the University regulations in Calendar Volumes I, II and the relevant rules in Calendar Volume III alone were applicable. Up to the stage of drawing the merit list for admission, there is no dispute. The Handbook prescribed the schedule of dates for the entrance test and admissions. For M.Sc. (Zoology) it was as under :

Date of entrance test : 11-7-1997 Time of entrance test : 9 a.m. Dates for displaying the first list : 15-7-1997 Second list : 18-7-1997 Third list : 22-7-1997 Final list : 24-7-1997##

One to three days' time was given for deposit of fees to the candidates who were granted admission. Some of the relevant clauses of the admission procedure as given in the Handbook are as under :

"(a) Candidates will not be required to appear for interview unless C otherwise specified. The merit list of the selected candidates will be displayed on the Notice Board of the department concerned.

Candidates are advised to attach all the documents and the testimonials along with their applications for determining their eligibility and merit and for allowing weightages. Incomplete and late applications will not be considered. Candidates whose name(s) appear in the merit list will be considered eligible for admission within the prescribed time. Such candidates will have to present themselves on the scheduled time and date in the department concerned for verification of their original documents. No excuse whatsoever shall be entertained for non-production of original documents.

(b) The candidates whose names appear in the merit lists will be considered eligible for admission within the prescribed time. Such candidates will have to present themselves in the department concerned at the scheduled date, time and place with their original certificate and documents for verification. No excuse of any sort including late arrival of buses, trains or any other mode of transport, and claims of having been sick, for not presenting themselves in time shall be entertained.

(c) All the remaining vacant seats under various categories, except those reserved for Scheduled Castes/Scheduled Tribes, after display of 2nd list will be grouped together and considered open and will be filled up on the basis of open merit out of eligible candidates who had applied by the last date specified and had also appeared in the entrance test.

(d) All the candidates who may be interested in seeking admission shall physically present themselves in the department concerned between 9.00 a.m. to 11.00 a.m. on the date given in the schedule of admissions to mark their attendance provided that they had submitted their admission form in time and had also appeared in the entrance test. Thereafter the final merit list will be prepared from amongst those who have marked their attendance. It will be displayed on the Notice Board of the respective department. Candidates so selected will get their documents verified and obtain the admission slip from the Chairperson of the department concerned and

deposit their dues etc. as specified above."

4. There are twenty seats in M.Sc. (Zoology) in the University. A Following the procedure prescribed in the Handbook, the names of the first twenty students in the merit list were displayed on the Notice Board on 15-7-1997. Of these twenty, only nine students deposited their fees and were granted admission. For the remaining eleven seats, the names of eleven students in different categories (Open/SC/ST) in the merit list were displayed on 18-7-1997. Of these, only six deposited their fees and were granted admission. For the remaining five seats, the names of students similarly in the merit list were displayed on 22-7-1997 and out of them, only three students deposited their fees and were granted admission. As on 24-7-1997, two seats continued to remain vacant even after the third list was displayed. As per the Handbook, all eligible students could now contest for these two seats by being physically present on 24-7-1997 on which date the two most meritorious students got admission. It is the submission of the University that the physical presence of students seeking admission is required only in the fourth list on 24-7-1997 and for the three earlier lists, students were not required to be physically present but were required to deposit their admission fee after getting their testimonials checked. We do not think that this submission arises for any consideration before us. All the seats having been filled up on 24-7-1997 admissions were closed. However, four students left the course and as a consequence four vacancies arose after 24-7-1997. These vacancies not only arose in the Department of M.Sc. (Zoology) but in various other departments in the University. The Handbook did not specify as to what is to be done in such circumstances. Here the Vice-Chancellor of the University intervened. He issued a notification dated 22-8-1997 having regard to the number of vacant seats in the university teaching departments. He ordered :

"1. Where the seats are vacant and admission forms are pending in the departments, the department shall call three times the number of candidates of the vacant seats for filling up such seats.

#2. * * *##

3. The departments having vacant seats under Category 1 above, shall call eligible candidates whose applications are pending (including those who could not deposit their dues) by registered post/telegram for physical presence on 28-8-1997 and finalise these admissions by closing of current month, with usual late fee."

Again, the Vice-Chancellor issued directions on 9-9-1997 to the following effect :

"In continuation of this Office Letter No. ACM-3/Admn. 97/19375-416 dated 22-8-1997 in the university teaching departments, the Vice-Chancellor has ordered to extend the schedule as under :

1. Where the seats are vacant and admission forms are pending in the departments, the department shall call three times the number of candidates of the vacant seats for filling up such seats.

#2. * * *##

3. The departments having vacant seats under Category 1 above, shall call eligible candidates whose applications are pending in the department, excluding those called for physical presence on 28-8-1997 and who failed to turn up, by registered post/telegram for physical presence on 15-9-1997 and finalise these admissions by

17-9-1997 with usual late fee.

You are requested to take further necessary action accordingly."

5. Following the directions issued by the Vice-Chancellor on 22-8-1997, twelve students including those who had been called earlier but had not deposited their fees were called on 8-9-1997 and out of them, only two appeared. Two more students including Jyoti Sharma, who had not been called, also appeared. Two seats in the order of merit were filled up. Again, following the direction of the Vice-Chancellor dated 9-9-1997, more students in the order of merit were called for the remaining two seats and three appeared on 15-9-1997 and the first two were granted admission on the same day. Jyoti Sharma was not called for interview but she appeared and as she was lower in the order of merit, she could not be granted admission. She then approached the High Court.

6. The High Court examined the admission record maintained by the University. It noticed that Mukesh and Sunaina never appeared personally though Jyoti Sharma did appear on all the due dates and yet Mukesh and Sunaina were granted admission. According to the High Court, a cumulative reading of various provisions as contained in the Handbook showed that candidates whose names appeared in the merit list, could be considered eligible for admission provided they presented themselves on the scheduled time and dates in the department concerned for verification of their original documents and on their failure to deposit fee the effect was of treating their seats vacant to be allotted to candidates next in the merit list. The High Court was thus of the view that Mukesh and Sunaina, who failed to present themselves before the competent authority between 15-7-1997 and 24-7-1997, lost their right altogether to be considered for admission and said "it was the bounden duty of the authority concerned to have offered admissions in the order of merit to the candidates who had made themselves available on the last date of admission". The High Court accepted the contention of Jyoti Sharma that admission of Mukesh and Sunaina was contrary to the rules as contained in the Handbook and the same was liable to be nullified and Jyoti Sharma, who appeared next below in the merit list, got the right to be admitted. The High Court held that the University could not have granted admission to Mukesh and Sunaina, which was contrary to the procedure prescribed in the Handbook and even after availing opportunity of admission, they failed to appear on 15-7-1997, 18-7-1997, 22-7-1997 and 24-7-1997. The High Court found substance in the submission of Jyoti Sharma and there was no explanation given by the University as to why the University did not admit four candidates against open category seats from amongst those who had presented themselves on 24-7-1997. The High Court held this action of the University to be arbitrary. It appears to us that the High Court fell in error in accepting this submission of Jyoti Sharma as four seats which fell vacant were after 24-7-1997. On 24-7-1997, all the thirty seats in the Zoology Department had been filled up and admission closed. A Since the Handbook did not prescribe as to how the seats falling vacant were to be filled up after admission had been closed, it was not necessary for the High Court to conclude that students who had been given opportunity earlier and did not avail of the same could never have been granted admission. The University also fell in error in contending that under Section 11(5) of the Act, the Vice-Chancellor could take action and had power to issue notifications dated 22-8-1997 and 9-9-1997. The High Court noticed subsections (4) and (5) of Section 11 but the University did not say if power could be exercised under sub-section (4) as the University based its case solely on sub-section (5) of Section 11. Both these sub-sections are as under :

#"11.(1)-(3) * * *##

(4) The Vice-Chancellor shall be the principal executive and academic officer of the

University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

(5) The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act, except in the matters involving creation or abolition of a faculty, department, or post, the matter involving appointment or removal of an employee :

Provided that the Vice-Chancellor, before exercising powers under this section, shall record in writing the reasons, why the matter cannot wait till the meeting of the authority concerned :

Provided further that if the authority concerned is of the opinion that such action ought not to have been taken, the decision of the authority thereon shall be final :

Provided further that person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under the sub-section shall have the right to represent to the Executive Council within one month from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor. The employee shall be informed that the action has been taken under emergency powers.

* * *"#

The High Court said and in our view rightly, that power under Section 11(5) was hedged with the following conditions :

"(a) the Vice-Chancellor must be of the opinion that immediate action is necessary on a particular matter;

(b) the Vice-Chancellor must record reasons in writing showing that the matter cannot wait till the meeting of the authority concerned; and

(c) if the authority concerned is of the opinion that such action ought not to have been taken, the decision of the authority is to be treated final."

According to the High Court, there was no such emergency for the Vice-Chancellor which warranted immediate action in his issuing two notifications and that he, therefore, could not have exercised powers under Section 11(5). The High Court examined the records of the University and noted that it did not show that the Vice-Chancellor recorded any reasons in writing showing that immediate action was necessary to protect the interest of the University and of the student community as required by the first proviso to Section 11(5). Thus according to the High Court, the Vice-Chancellor could not have exercised emergency powers to "facilitate the admission" to those who rendered themselves ineligible to be admitted by remaining absent on the dates specified in the rules and that the two notifications issued by him contravened rules framed by the University for admission to various courses. On these premises, admission of Mukesh and Sunaina was set aside and mandamus issued to admit Jyoti Sharma.

7. An objection has been raised by the University that it was not correct on the part of the High

Court to hold that the Vice-Chancellor exercised powers to "facilitate the admission" of Mukesh and Sunaina thus causing aspersion on the action taken by the Vice-Chancellor. We do not think that the High Court intended to cause any aspersion on the Vice-Chancellor by use of the words "facilitate the admission". Reading of the impugned judgment of the High Court merely conveyed that the action of the Vice-Chancellor gave advantage to Mukesh and Sunaina for admission which right they had lost. Nothing need be read more into the words used by the High Court.

8. It was submitted by Mr. Gupta, learned counsel for the University, that the impugned judgment of the High Court has in effect, divested the Vice-Chancellor of his powers of admission where the Handbook is silent. He pointed out that under Section 11(4), the Vice-Chancellor is the principal executive and academic officer of the University and is empowered to exercise general supervision and control over the affairs of the University and also to give effect to the decisions of all the authorities of the University. Mr. Gupta said that if the decision of the High Court is correct, it would be difficult for the Vice-Chancellor to smoothly run the affairs of the University and it is not that the Executive Council can be called as often as a contingency like the present one arises. According to Mr. Gupta, it was a case of emergency inasmuch as the academic year had begun and seats had fallen vacant and there were students who were eligible for admission. What the Vice-Chancellor did was to give option to all the remaining students irrespective of the fact whether they had appeared earlier or not and then the admission was granted to more meritorious students. The action of the Vice-Chancellor was reasonable and bona fide and in the academic interest of the University.

9. Our attention has been drawn to Section 23 of the Act under which the Executive Council, which is the principal executive body of the University, is authorised to issue ordinances. Under Section 22, an ordinance may provide for admission of students to the University, their courses of study, etc. Ordinance 1 provides that admission of students shall be regulated by the Admission Committee, Constitution of which is provided therein. It is the Admission Committee which prescribes the manner in which admission to the university teaching departments and to the colleges recognised/maintained by the University shall be regulated. It is the Admission Committee which lays down the principles for drawing up merit lists of candidates applying for admission, number of seats, reservation of seats, schedule of dates for admission to various courses, etc. Reference was also made to the minutes of the Admission Committee which had prescribed the admission procedure under the Handbook and which authorised the Vice-Chancellor to decide the schedule of admission for the Academic Year 1997-98. With reference to these minutes, it was pointed out that when earlier for the Academic Year 1996-97 such contingency had arisen and the Vice-Chancellor exercised his powers, the same were approved by the Admission Committee. But these submissions relating to sub-section (4) of Section 11 and powers of the Admission Committee of the University were not made before the High Court to justify the action of the Vice-Chancellor in issuing the two notifications and the High Court had no opportunity to consider the same. We cannot permit the University to come up with a new case before us which was not pleaded before the High Court. If outside sub-section (5) of Section 11 of the Act the Vice-Chancellor has powers to take action, which has been impugned before the High Court, we are not called upon to decide the same.

10. In the circumstances, we do not find any error in the impugned judgment where the High Court held that the Vice-Chancellor could not have in the established facts of the case exercised power under Section 11(5) of the Act by issuing notifications dated 22-8-1997 and 9-9-1997. As regards the objection of the University that there could be more meritorious students than Jyoti Sharma, we will only say that no one has come forward to stake his claim for admission and since one academic year has already been over, it loses its relevance. If the action of the Vice-Chancellor is valid, the

University is certainly right in its submission that students more meritorious than Jyoti Sharma should first have been offered the seat. Since three seats in M.Sc. (Zoology) for the Academic Year 1997-98 were vacant at the time when these matters came up before us and all the three students Mukesh, Sunaina and Jyoti Sharma have been accommodated, we will set aside the order of the High Court cancelling admission of Mukesh and Sunaina. All the three students can continue their studies in M.Sc. (Zoology) in the University. A happy ending at that for them.

11. Both the appeals are disposed of in these terms. There shall be no order as to costs.