

RAJASTHAN HIGH COURT

Reena Jain

Vs.

Mohan Lal Sukhadia University Udaipur

Civil Writ Petn. Nos. 2330 and 2331 of 2001

(S.K. Keshote, J.)

30.08.2001

JUDGEMENT

S.K. Keshote, J.

1. The petitioner passed her B.Sc. Examination in the year 1999 with second division. From the marksheet of this examination which is Annexure-1 at page No.17 of the petition, she has opted for the subjects Chemistry, Botany and Zoology. Pre-Teacher Education Test 2000 (hereinafter referred as the PTET) was conducted by respondent No.1 for admitting the candidates in various colleges through out the State in the B.Ed. course. The petitioner filed her application form to the respondent No.1. In the application form as per the petitioner's own case it is mentioned that she belongs to Science Faculty. In column No.9 of the application the petitioner mentioned three teaching subjects as Biology, General Science and Home Science. It is admitted case of the petitioner that in the 9th column of the application at serial No.3 thereof, the petitioner mentioned Home Science as one of the teaching subjects. As regards the preference for the colleges, the petitioner gave same as under :-

- (i) Kota Girls College
- (ii) Rajasthan Womens Teachers Training College, Udaipur.
- (iii) Lal Bahadur Shastri Mahila Shikshan Prashikshan Mahavidhyalya, Jaipur.

2. The petitioner was permitted to appear in the PTET examination. She was declared successful and allotted college viz. Rajasthan Women's Teachers Training College, Udaipur. She approached Rajasthan Women's Teachers Training College, Udaipur on 22-12-2000. During the process of her admission in the college, she has been pointed

out that teaching subject Home Science has wrongly been given to her as she belongs to Science Faculty. The Principal directed the petitioner to get the subject corrected from PTET office.

The petitioner approached the PTET office, met there with Shri M.L. Vyas who told her that the information regarding the admission and correction of subject would be given to the petitioner later on after making necessary correction. In this process what has been given out to her that allotment of college to her may also be changed. On or before 12-1-2001 the petitioner received a call letter from respondent No.1 informing her that she has been granted admission in Shri Agresen Post Graduate College, Jamdoli, Jaipur and she has to take the admission after depositing fees etc. on or before 23-1-2001. The petitioner in pursuance of letter aforesaid received from respondent No.1, approached respondent No.2 and she was given admission to B.Ed. course. The petitioner after her admission to the respondent No.2 College is regularly attending the classes and she has almost undergone half of the course by now as the duration of B.Ed. course is of one year.

3. It is grievanced that to the utter shock and surprise of the petitioner, a letter dated 2-5-2001 has been issued by respondent No.2 informing her that admission to B.Ed. course has been cancelled by respondent No.1 under its order/letter dated 28-4-2001. It is submitted that the petitioner has not been supplied the copy of the letter/order dated 28-4-2001 of respondent No.1.

4. It is really shocking that the petitioner has not received as per her own case the copy of order/letter dated 28-4-2001 of respondent No.1 but she has given and stated the contents thereof in the petition. That way of the dealing the matter by the petitioner who approaches this Court for seeking relief under its extraordinary jurisdiction is difficult to appreciate. This conduct of the petitioner goes to show that she tried to make attempt not to disclose all the material and relevant facts relating to this document to the Court. Be that as it may after the letter dated 2-5-2001 the petitioner met the Principal of the college, respondent No.2, and requested him not to cancel her admission till she approaches respondent No.1 and clarifies the details. She also stated to have demanded copies of certain documents. She has been informed by respondent No.2 that entire record related to her admission to B.Ed. course has been handed over/sent back to the office of respondent No.1 in compliance of its order/letter dated 28-4-2001.

5. This petition is presented by the petitioner in the Court on 15-5-2001. It was placed for preliminary hearing on Board on 18-5-2001. It was admitted and notices were issued to respondents. On stay application, the Court has been pleased to issue the notices to respondents and in the meanwhile, the operation of the order dated 2-5-2001, Annexure-7 to the writ petition, passed by respondent No.2 ordered to be kept in abeyance till further orders. The respondents were further restrained to interfere with the prosecution of the studies by the petitioner in B.Ed. course in Shri Agresen Post Graduate College, Keshav Vidhyapith, Jamdoli, Jaipur.

6. On 9-8-2001, the ex-parte interim stay order granted earlier by this Court has been made absolute and the matter was placed for final hearing.

7. Respondent No.1 has filed the reply to the petition on 6-7-2001 to which the petitioner has not filed any rejoinder. This position has also not been disputed by the learned counsel for the petitioner.

8. In the reply to the petition, respondent No.1 has come up with the case that the petitioner has mentioned Home Science as one of the combination of teaching subjects which is available only to the candidates belonging to faculty of Arts as per the instructions mentioned in the admission form. It is submitted that the nomination of the petitioner at Rajasthan Women's Teachers Training College, Udaipur was apparently a mistake committed and rightly she was not admitted by the college and asked her to get correction of her teaching subject. In view of these facts it is stated that the case of the petitioner was wrongly considered for admission in the faculty of Arts. This mistake has been committed as petitioner has mentioned Home Science as a teaching subject with the faculty of Science (Bio). Home Science could have been opted by the candidates from Arts faculty. For District Baran from the faculty of Science she could not get admission in B.Ed. course as she does not stand in the merit. In the Baran District in faculty of Science the cut off point was at 428 marks and the petitioner has secured 352 marks only. But due to the mistake of the computer as what is stated by respondent No.1 on process of finalisation of the admission on account of wrong feeding of the subject Home Science in the faculty of Science, she has been admitted to the respondent No.2 College. It is urged that on detection of this mistake, the admission of the petitioner has been cancelled. It is not in fact a cancellation of the admission of the petitioner but it is stated to be a case of the rectification of the mistake which is not only a prerogative and right of respondent No.1 but a pious duty

also. It is reiterated that because of wrong mentioning of subject Home Science with faculty of Science admission has wrongly been given to the petitioner. As per the instructions mentioned on the back of the admission form, it is not permissible for a candidate of Science faculty to have opted for combination subject home Science. This subject is available in Arts faculty. In column No.8 of the form, subjects Zoology, Botany and Chemistry are mentioned which have been taught to her in the graduation and she was at liberty to opt the teaching subjects Biology (Zoology + Botany), Chemistry or General Science but not the Home Science which she never studied in B.Sc.

9. In the reply to the petition it is stated by respondent No.1 that the admission to B.Ed.course has been closed on 28-4-2001. It is urged that it will not be in the interest of justice to continue her in the B.Ed. course to which admission was got on the basis of wrong information and with illegal means.

10. SB Civil Writ Petition No.2331/2001

The facts of this case are identical to the case of the petitioner in S.B. Civil Writ Petition No.2330/2001 except in that case Home Science was mentioned as teaching subject and in this case Hindi was mentioned. So the detailed facts of this case need not be given.

11. Learned counsel for the petitioners contended that the order/letter dated 2-5-2001 cancelling the admission of the petitioners is wholly illegal, arbitrary and a grave abuse of powers conferred on the respondent No.2 as before passing of this order /letter the petitioners have not been given any show cause notice nor any opportunity of hearing to make the representation. It is urged that otherwise also this action is bad for the reason that the copy of the basic order dated 28-4-2001 has not been given to the petitioners. It is submitted that whatever the mistake committed by the petitioners in filling up the form it has been rectified and they have been given admission accordingly in Science faculty and there would not have been any occasion for respondent No.1 to cancel their admission and that too in violation of the principles of natural justice. It is contended that there are candidates belonging to the Science faculty who secured lesser marks than the petitioners and they have been granted admission to the different colleges in State and this action of the respondents cancelling their admission is wholly arbitrary and unjustified.

12. It has next been submitted that as per the admission rules, 20% seats are required to be filled in on the basis of overall merits. The candidates securing lesser marks are continuing in the different colleges. It is incumbent upon the respondent No.1 to continue the petitioners as against those seats which are required to be filled in on the basis of overall merits of the candidates. Lastly it is urged that the petitioners have already undergone and completed half of the B.Ed. course and thus it is highly inequitable and inappropriate on the part of respondent No.1 to ask them to go home. The petitioners also invested a huge amount while continuing their studies in B.Ed. course in the college. Mere return of admission fees etc. will not save the valuable one year of the petitioners and will not recover the irreparable injury to which they will be subjected. In support of his contentions, learned counsel for the petitioners placed reliance on the following decisions :-

- (1)*Rajendra Prasad Mathur v. Karnataka University*, ¹
- (2)*A. Sudha v. University of Mysore*, ²
- (3)*Shrawan Kumar v. Director General of Health Services*, ³
- (4)*Randhir Singh v. State of Rajasthan*, ⁴and
- (5)*Smt. Reeta Sharma v. University of Raj* ⁵

13. Mr. Katta, learned counsel for the respondents submitted that it is a case where the petitioners though were much lower in the merits of the faculty of Science of women of the Baran district were prepared for giving admission to B.Ed. course still, because of the mistake committed by the computer they got admission. In case the petitioners are protected by this Court, it will result in perpetuating illegality. It has next been contended that as it is a case of mistake of computer, the petitioners cannot be given any benefit merely because they approached the Court. As the petitions have been admitted and interim relief is granted in their favour and in pursuance thereof they are continuing at College. It is submitted that against the admission of these candidates from the merit list of the faculty of Science (women) of Baran district, the grievance has been made by the candidates who stand at higher number in the merits and one of the candidate has also filed the petition in this Court. This Court has disposed of that petition by giving direction to respondent No.1 to examine the matter and in case any candidate lower in the merit than the petitioner therein in the Baran district of faculty of Science is given the admission in B.Ed. course appropriate decision be taken. He submitted that after receipt of the representation of the candidates who stand at higher merit than the petitioner and after decision of this Court in the case of one of the

candidates the matter has been examined and on examination thereof this computer mistake committed in giving the admission to the petitioner was noticed and accordingly their admissions were cancelled. It is urged that the candidate who filed writ petition before this Court also could not get admission as many candidates standing at higher merits than her were not given the admissions. In reply to the contentions raised by the learned counsel for the petitioners regarding violation of the principles of natural justice against the order dated 28-4-2001 of the respondent No.1 and that of the respondent No.2 dated 2-5-2001, it is contended that it is a case of correction of the mistake committed by the computer in giving the admission to the petitioners and before cancellation their admission the principles of natural justice were not required to be complied with. In reply to the last contention raised by the learned counsel for the petitioner, the learned counsel for the respondent submitted that in case only on the ground of this admission given by mistake, if the petitioners are protected, it will result in perpetuating illegality and at the cost of many candidates who stand at much higher number in the merit list of women for the district Baran of the Science faculty prepared for giving admission to B.Ed. course.

14. With the consent of learned counsel for the petitioners the copies of the following documents are taken on record :-

1. Zerox copy of the order dated 28-4-2001 of respondent No.1.
2. Copy of S.B. Civil Writ Petition No.1686/2001.
3. Copy of letter dated 24-4-2001 written to Ritu Singh.
4. Copy of representation of Ritu Singh dated 24-4-2001.
5. Copy of the order of this Court dated 13-4-2001 in S.B. Civil Writ Petition No.1686/2001.
6. Copy of the representation of Ritu Singh dated 19-1-2001.
7. The district-wise merit list of Science of district Baran of women candidates.

15. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties, perused the writ petition, its enclosures, reply to the writ petition, its enclosures and the copies of documents which have been taken on record with the consent of learned counsel for the petitioners.

16. Learned counsel for the petitioners does not raise any dispute on the following facts:-

(1) That the petitioner Reena Jain in Writ Petition No.2330/2001 in her admission form of the PTET has mentioned Home Science as one of the teaching subjects.

(2) Reena Jain was not having the subject Home Science in her three years degree course (Science). She has subjects Chemistry, Botany and Zoology in the three years degree course (Science) which she passed from Maharshi Dayanand Sarawati University, Ajmer. She was nominated for admission on the basis of treating her to be graduate in Arts faculty in the B.Ed. course at Rajasthan Women's Teachers Training College, Udaipur by mistake.

(3) This nomination was not given effect to by the Principal of that college as she was not eligible for the admission and this position is admitted by the petitioner.

(4) In the district-wise merit list of women candidates in the Science faculty of Baran District the name of the petitioner Reena Jain stands at No.28. She obtained 352 marks in the PTET examination. The last candidate in the Science faculty from women merit list of Baran District given admission is at serial No.5 and she got 428 marks in the PTET examination. So, the candidates at serial Nos.6 to 27 in the merit list of women aforesaid were not given the admission as they got marks in PTET examination less than 428.

17. So far as petitioner Pinky Jain in Writ Petition No.2331/2001 is concerned, the other facts are almost identical except that in the admission form of PTET she has mentioned subject Hindi which she has not studied in her three years degree course. In the district-wise women merit list of Baran her name stands at serial No.9. She got 415 marks in the PTET examination. The candidates at serial No.6, 7 and 8 were higher in the merit but they could not get the admission.

18. The petitioners have not disputed the fact that the admissions to the B.Ed. course in pursuance to the PTET were closed on 28-4-2001. The petitioners were admitted to the course on 23-1-2001 in the respondent No.2 college.

19. First of all I consider and deal with the point whether it is a case of *bonafide* mistake on the part of these petitioners to mention the subjects in the case of first petitioner Reena Jain Home Science in the form filled in by her for PTET and Hindi by second petitioner in the examination form for the said examination or it is a

deliberate act on their part to get the admission to B.Ed. course. It is not the case of the petitioners that these forms were not filled in by the petitioners themselves. In view of this undisputed fact, it is to be taken that these forms were filled in by the petitioners themselves.

20. The original record of these matters is brought by the counsel for the petitioners for the perusal of the Court. I have gone through the original application form filled in by these two petitioners for PTET. Having gone through these admission forms I am satisfied that these are filled in by the petitioners themselves.

21. The petitioners have passed the three years degree course examination in Science faculty and it is difficult to believe not to say to accept that they will commit the mistake in mentioning the subjects which they were never taught and studied in that course. This is also not believable for another reason that the petitioners have mentioned their subjects which they were taught and read in the three years degree course in column No.8 of the application form. In column No.8 of the application form, they have mentioned the optional subjects as well as the compulsory subjects. In column No.9 of the application form they have to disclose the minimum two teaching subjects out of the subjects which they have been taught and studied in the three years degree course examination. It is not in dispute between the learned counsel for the parties that for the students of the Science faculty the General Science can be taken to be a teaching subject for the B.Ed. course. Having gone through the contents of the columns 8 and 9 coupled with the fact that the petitioners were knowing very well what subject they were taught and studied in three years degree course it is difficult to believe not to say to accept that by mistake they have mentioned in the first case Home Science and in second case Hindi as their teaching subjects. In the facts of this case coupled with the facts that the petitioners were very well knowing of the subjects which they were taught and studied in the three years degree course, the mark sheets were known by them of the three years degree course, the forms were filled in by themselves and they know that minimum two subjects from their optional subjects are to be opted as teaching subjects in B.Ed. course, they know also that as per the rules of admission to the B.Ed. course a candidate can opt for a subject as her/ his teaching subject which she /he studied in three years degree course for at least two years, it is difficult to accept it to be a case of *bonafide* mistake of the petitioners in mentioning Home Science and Hindi respectively as one of their teaching subjects. It is a clear case of attempt made by the petitioners to get the admission where they failed to stand

in merit in the Science faculty, in the Arts faculty. It is a case where the petitioners have cleverly and smartly acted. In case this class of the candidates who act cleverly and smartly for getting the admission to B.Ed. courses are permitted to enter this noble profession of teaching to the students who will be future President, Prime, Minister, Minister, IAS, IPS or allied services officers at the State level or Central level or the Doctors, engineers and other professionals what will be the fate of the country. At this initial stage of their career, the petitioners have made attempt to mainpulate theiradmissions to B.Ed. course if ultimately they are permitted to enter in the profession of teaching it will not be in the larger interest of the society.

22. As a result of the aforesaid discussion I do not agree that mentioning of these two subjects Home Science in the first case and Hindi in the second case as one of the teaching subjects in the application forms by the petitioners is a *bonafide* mistake. It is to be stated at the cost of repetition that it was a deliberate act of the petitioners with the clear object and purpose to get the admission to the B.Ed. course by any means.

23. Now I have to deal with the case of the respondents that the admission of these two petitioners to the respondent No.2 College, were as a result of the computer mistake. I do not agree with this defence of respondent No.1 and the contention raised by its counsel that by computer mistake these two petitioners were given the admission in the Science faculty of the B.Ed. course in the respondent No.2 College.

24. Computer is based on science. In the matter where the computer committed a mistake a mere word from the mouth of respondent No.1 is not sufficient. It has to be illustrated by the expert how this is a mistake of the computer. In the reply to the writ petition though a statement has been made that it is as a result of computermistake these two petitioners have got the admission but the scientifically or otherwiseillustrating datas are not given nor any reason or ground has been given in support thereof. In the absence of all these necessary details, datas, grounds and explanation for this alleged computer mistake it cannot be accepted only on the basis of a word of mouth. Shri R.K. Sharma who swore this affidavit in support of the reply to the petition has not a computer expert as he is not claimed himself to be an expert in the computer. This is a matter where an expert opinion or explanation in the reply to the petition is necessary and only on the satisfcation of the Court it can be taken to be a case of computer mistake, but not only on a word of mouth which is not supported

by any scientific data, explanation and expert opinion. This is a case where respondent No.1 only to save and protect the possible connivance of its officers in securing of the admission of the petitioners at respondent No.2 College, this defence has been taken. In the era of computer science this defence taken in the form and manner without providing necessary data, grounds and explanation or expert opinion, it cannot be accepted. When this has not been done which should have been done by the respondent No.1, this defence taken by it cannot be accepted. Next question which falls for the consideration of the Court is how the admissions were given to the petitioners. It appears to be case of a gift to them in the B.Ed. course and that too at the cost of many meritorious candidates than them.

25. Before proceeding, considering and giving decision on this aspect of the matter here I consider it to be appropriate to make reference to the merit list prepared of the women candidates of Science faculty for district Baran. This merit list is prepared by the computer and having a glance thereon I do not find any mistake therein. The names of the candidates have been arranged strictly in the order of the marks they secured in PTET. When this list has been prepared strictly in the order of the marks obtained by these candidates in the PTET how it can be said to be a case of computer mistake in giving the admission to these two petitioners in B.Ed. course in respondent No.2 College. This list has been produced by respondent No.1 itself on the record. The learned counsel for the petitioners or the respondent No.1 or officer-in-charge of the case has failed to show where the mistake is there in this merit list. It is understandable where the names of the petitioners have been mentioned above the serial No.4 and they got the admission. But that is not the case here. Their names are arranged in this merit list strictly in the order of marks secured in PTET. So what is alleged and urged by the respondent No.1 is nothing but only a pretext or a defence for the sake of defence.

26. I do not find anything on the record of the petitions nor anything has been shown from the record of the case by the counsel for respondent No.1 that prior to filing of the reply to this petition at any stage it is found to be a case of computer mistake in giving the admission to these two petitioners in B.Ed. course at respondent No.2 College. In this respect the first reference we may have to the application filed by Ritu Singh, Roll No.211257 dated 19-1-2001 to the Controller of PTET Examination 2000. In this application the grievance made against the admission of Reena Jain was not replied by respondent No.1. She was not replied that it was a case of computer mistake and it has

to be corrected. Copy of the writ petition filed by Ritu Singh in this Court is produced on the record but the respondent No.1 has not filed the copy of the reply filed by it to this petition and to show and refer any other material that therein this defence has been taken that by computer mistake the admission was given to Reena Jain.

27. Reply to the petition has been filed by the respondent No.1 on 6-7-2001 that is much after the decision of this Court in Ritu Singh's petition (S.B. Civil Writ Petition No. 1686 /2001) dated 13-4-2001. In this reply, respondent No.1 has not stated that Ritu Singh's case was decided by this Court after notice to it or not. From the order of the Court dated 13-4-2001. In Ritu Singh's petition *prima facie* it appears that this petition was disposed of without notice to respondent No.1. Whatever it may be whether the decision was given after notice or without notice to respondent No.1 but the fact remains that the reply to the application filed by Ritu Singh was not given to let her know that Reena Jain was given admission due to computer mistake. In case it would have been the case of computer mistake what it is now pleaded, alleged and projected by respondent No.1 on receipt of the first application of Ritu Singh the mistake should have been corrected accordingly and not only the reply to the application should have been given but the admission of this petitioner should have been cancelled.

28. The next document is the application of Ritu Singh filed by her on 24-4-2001. In the reply to this application dated 24-4-2001 it is not the case of respondent No.1 that this was a case of computer mistake. In the facts of the case this defence raised, taken and advanced during the course of argument by the respondent No.1 that the admission given to the petitioners in the B.Ed. course in science faculty is as a result of the computer mistake is difficult to accept. It is to be stated at the cost of repetition that no material whatsoever has been produced by respondent No.1 with the reply to the petition to show and establish that it is a case of computer mistake. It is not a simple matter which by word of mouth can be stated and the Court has to accept it to be a case of computer mistake. This is totally scientific matter and it would not have been difficult for respondent No.1 where it would have been really a case of computer mistake to illustrate the same by giving the necessary scientific data and details. In view of these facts and discussions made above, this plea taken by respondent No.1 regarding the admission of these two petitioners to B.Ed. course though they stand at much lower number in the merit list due to the computer mistake is not acceptable and it cannot be accepted.

29. Now I may revert to the contentions raised by the learned counsel for the petitioners.

30. Regarding first contention- the order /letter dated 2-5-2001 is illegal, arbitrary and abuse of the powers conferred on the authorities as it has been made in violation of the principles of natural justice.

31. It is not in dispute that the order / letter dated 2-5-2001 of the Principal of the College respondent No.2 has been made without a notice and opportunity of hearing to the petitioners. From this order /letter I find that the Principal of the College respondent No.2 did nothing in this matter. Undisputedly he was not a competent authority or the officer to cancel the admission of the petitioners to the B.Ed. courses. This power undisputedly vests with respondents No.1. The order/letter dated 2-5-2001 is nothing but only a communication of the order/letter dated 28-4-2001 of respondent No.1 under which the petitioners' admission to the B.Ed. courses have been cancelled. In view of the fact the letter/order dated 2-5-2001 cannot be taken to be a substantive order, it is only a communication of the order/letter of the competent authority to the petitioners. In view of these facts I do not agree that the Principal of the College respondent No.2 has to follow the principles of natural justice before passing order/letter dated 2-5-2001 to the petitioners. The challenge made by the petitioners to the order/letter dated 2-5-2001 of the Principal of respondent No.2 on the ground that it is made in violation of the principles of natural justice is not tenable. The Principal of the respondent No.2 College was only a communicating authority of the order/letter dated 28-4-2001 of the the cancellation of the admission of the petitioners to the B.Ed. courses.

32. Be that as it may, it is also not in dispute that respondent No.1 has not given a notice or opportunity of hearing to the petitioners before he has taken the decision to cancel the admissions of the petitioners to the B.Ed. courses. During the course of arguments, learned counsel for the petitioners has raised the contention that the order dated 28-4-2001 has been passed in violation of the principles of natural justice. Another contention is also raised that the order dated 28-4-2001 is bad as the copy of the same has not been given to the petitioners. I find sufficient merit in the contention of learned counsel for the petitioner that the copy of the order date 28-4-2001 is to be furnished to the petitioners but merely on non-furnishing of the copy of this order I do

not agree with the contention of learned counsel for the petitioners that it vitates the facts of the case. An order which adversely affects, even if it is an administrative, the civil right of the citizens or ensues civil consequences, the copy of the same is to be given to the concerned person. It is a case of the cancellation of the admission of the petitioners to the B.Ed. courses and ordinarily copy of this order should have been sent to the petitioners by respondent No.1 or it should have been sent/communicated to the petitioners by respondent No.2 along with it this order/letter dated 2-5-2001. The order dated 28-4-2001 adversely affects the civil rights of the petitioners or ensues civil consequences as thereunder the admission of the petitioners to the B.Ed. courses has been cancelled. In ordinary course before making this order, respondent No.1 should have adhered to the principles of natural justice that is to say that the petitioners should have been given a notice and the opportunity of hearing. It is not a simple order which does not affect the petitioners adversely. It is a very serious matter pertaining to the cancellation of admission of the petitioners to the B.Ed. courses and it is expected from respondent No.1 to pass the same only after giving a notice and opportunity of hearing to the petitioners. But whether only on this ground any relief can be given to the petitioners in facts of the case in the present matter is the next question that needs to be examined by the Court.

33. In the case in hand it is not in dispute that as per the merits number of the petitioners in the merit list of women candidates of science stream of district Baran, the petitioners could not have been admitted to the B.Ed. courses. Learned counsel for the petitioners was also in agreement that on merits, the petitioners have no case because as per the merit list they have no chance of the admission in the B.Ed. courses. However, what the learned counsel for the petitioners contended is that it is a case where the petitioners have been given admission and half of the course has been completed they may be allowed to continue and complete the same. So in fact and substance it is a mercy appeal which the petitioners are making to the Court.

34. In the case of *K.L. Tripathi v. State Bank of India*,⁶ their Lordships of the Supreme Court laid down the principle that not mere violation of natural justice but be facta prejudice had to be proved. Their Lordships observed as under (Para 31 of AIR) :--

It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent..... There must also have been some real prejudice to the complainant; there is no such thing as

a merely technical infringement of natural justice. The requirements of natural circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with so on and so forth".

35. In case of *State Bank of Patiala v. S.K. Sharma* ⁷ the principle of prejudice" has been further elaborated. The same principles have been reiterated by their Lordships of the Supreme Court again in the case of *Rajendra Singh v. State of M.P.*, ⁸

36. In case of *S.L. Kapoor v. Jagmohan*, ⁹ their Lordships of the Supreme Court laid down two exceptions to the general and expected rule of passing an order adversely affecting the right or civil benefits or resulting in civil consequences is to be made after adherence to the principles of natural justice if on admitted or indisputable facts only one conclusion is possible then in such a case in other words that the breach of natural justice was itself prejudice would not apply. In other words no other conclusion was possible on admitted or indisputable facts it is not necessary to quash the order which was passed in violation of principles of natural justice.

37. The reference may be had to the latest pronouncement of their Lordships of the Supreme Court in case of *Aligarh Muslim University v. Mansoor Ali Khan* ¹⁰ I cannot do better than to quote here the relevant portion of the judgment which reads as under :- (Para 24 of AIR)

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta* (AIR 1999 SC 2583) referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some other have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis,

it may depend on the facts of a particular case."

38. In the case in hand on the admitted indisputable facts only one view is possible that the admission given to the petitioners to the B.Ed. courses is illegal. In that event by not giving the notice and opportunity of hearing, no prejudice can be said to have been caused to the petitioners. Learned counsel for the petitioners has failed to show how any prejudice is caused to the petitioners by not giving the notice and opportunity of hearing before passing the order dated 28-4-2001. His only contention as said earlier is that half of the course has been completed, the Court may continue the petitioners to complete the course, no other prejudice has been shown to have been caused. This is in fact not a contention having legal sanction behind it but a contention to seek the indulgence and sympathy of Court in the matter. In the facts of this case where admissions of the petitioners to the B.Ed. courses have been made in total disregard of their merits, even if before cancelling the admission notice or opportunity of hearing is not given to them, it will not result in vitiating the order dated 28-4-2001. This matter is squarely covered by the decision of their Lordships of the Supreme Court in case of *S.L. Kapoor v. Jagmohan (AIR 1981 SC 136)* (supra) on this point. So this contention raised by the learned counsel for the petitioners is devoid of any substance and merits.

39. Regarding second contention- that mistake earlier committed by the petitioners in filling up their admission forms has been rectified and they have been given admission accordingly to the science faculty and there would not have been any occasion for cancellation of their admission.

40. This contention raised by the learned counsel for the petitioners is also devoid of any substance and merits. It is a case where at the threshold at Rajasthan Women's Teachers Training College, Udaipur it is detected by the Principal of the College that these two petitioners could not have been given admission in B.Ed. course in the teaching faculty/subjects of arts. These two petitioners could not be given the admission and rightly so and were directed to go for correction of subject etc. to the respondent No.1. Leaving apart this question as well as whether it is *bonafide* mistake or error or not in mentioning of the teaching subject in the admission form, the petitioners could not have been given admission as per their merit number in list also at respondent No.2 College. It is not a case where the petitioners though were having merits and not given admission. It is not the case of the petitioners that any candidate lower in the merit number than the petitioners has been given admission and they they

have been deprived admission. It is a clear case of giving the admission to these two petitioners depriving of the same to number of the candidates who stand above them in the merit list of the women candidates of district Baran. This contention has no relevance whatsoever to the cancellation of the admission of the petitioners to the B.Ed. courses. Correction what it is stated to be made of the mistake in filling the forms by the petitioners does not mean nor it can be taken to give the admission to the petitioners in teaching faculty of science/subject in the B.Ed. courses ignoring the merits of those candidates who undisputedly are above the petitioners in the District merit list.

41. The third contention raised by the learned counsel for the petitioners that candidates belonging to teaching faculty science subject secured lesser marks than the petitioners have been given admission to different colleges in the State and the cancellation of the admission of the petitioners is arbitrary, unjustified is also equally of no substance, worth and merits.

42. As per the scheme of the admission to the B.Ed. courses in the State 20% seats are to be filled in on the basis of general merits and 80% are to be filled in on the basis of district-wise merit list prepared. The petitioners were not given admission to the B.Ed. courses in the respondent No.2 college on the basis of the general merits at the State level. Thus it is of no substance, relevance and help to the petitioners that on the basis of State merit list re-20% of the seats to be filled in any candidates less meritorious than the petitioners has been given admission to the B.Ed. courses. Otherwise also this is a vague, indefinite and bald statement made by the petitioners without giving specific instances of any candidate who has been given admission though secured marks less than the petitioners in PTET in any college in State against 20% of State merit seats. In the matter of admission to the B.Ed. course, this type of the pleading and allegations are hardly of any substance, worth and help to the petitioners. Unless specific instances are cited or given in the writ petition and those persons have also been impleaded as party to the petition no obligation is there on the Court to examine this point nor any relief can be granted to the petitioners on the basis thereof.

43. Similarly is the case with the contention of the learned counsel for the petitioners regarding admission in the B.Ed. course on the basis of the district-wise merit list prepared. Here also the petitioners have not given out the details of those candidates

though secured less marks than the petitioners in PTET but still got the admission. this contention on the face of it is nothing but only a contention to mislead and misguide the Court. If we go by the merit list prepared of the women candidates of teaching faculty science/subject of the Baran district, it is a case where many candidates though stand higher in merit list than these two petitioners have been deprived of the admission to the B.Ed. courses. Looking to and examining this matter from this aspect, the contention aforesaid raised by the learned counsel for the petitioners is not correct on the fact of it.

44. Now I may advert to the last contention raised by the learned counsel for the petitioners that they have already undergone and completed half of their course and it will be highly inequitable and inappropriate if at this juncture they sent back are home.

45. Though this contention on the face of it appears to be attractive one but if we go by the substance it cannot be accepted nor any relief can be granted to the petitioners on this basis in the case.

46. The admission to the B.Ed. courses throughout the State in the colleges are made as per the admission rules strictly on the basis of the merits of the candidates which they secured in the PTET, so these admissions are to be made only on merits of candidates that is to say that the merit is the only consideration for admission to the B.Ed. courses in the State at different colleges. For the assessment of the this merit the State is not dependent on the performance of the candidates in the Graduation examination in different faculties held by the different Universities. To fulfil this object and purpose of securing best meritorious candidates for the B.Ed. course the system is introduced to hold Pre-Teachers Education Test. Where the merit is the only criteria and consideration for the admission to B.Ed. course any consideration other than the merit is given effect to and that too only on the ground that the petitioners though could not have been given admission to B.Ed. course they got the admission and completed half of the course it will be against the basic concept and principle of the merit admission to this course and further will render it nugatory and ineffective. Secondly in case on this consideration any relief is granted to the petitioners in these petitions by the Court who though could not have got the admission to B.Ed. course but got the same, it will result in encouraging corruption, nepotism and favouritism in

the admissions. It is a serious complaint of the public that in these admissions corruption, nepotism and favouritism is writ large. How far it is correct. It is not a matter for consideration of the Court at this stage but if in case this relief is granted to this class of persons by the Court on this alleged ground certainly it may result in opening flood gate of corruption and favouritism. As said earlier in these two petitions there appear all possibilities of manipulation of the admission by the petitioners at the respondent No.2 College in collusion with the persons concerned and connected with the making of the same. Where the merit is only criteria and consideration for the admission to this course it is to be prevailed only and no other consideration whatsoever. The Court proceeded in such matters on sympathy or have a lenient view or a casual approach it will result in serious blow to this merit criteria and consideration for these admissions to the B.Ed. courses.

47. Learned counsel for the petitioners though placed reliance on some decisions of this Court and of the Hon'ble Supreme Court but same are of little help and substance to the petitioners in these matters. Each case has to be considered, approached and decided on its own facts. In the case in hand it is not in dispute that the admission to the B.Ed. courses are continued in pursuance of the PTET upto 28-4-2001. The admissions were closed only on 28-4-2001 and that is the point of time from which the Court has to take into consideration the duration of the period of study of the petitioners in the course. On the very day of closure of admission, the admissions of the petitioners in B.Ed. courses at the respondent No 2 College have been cancelled by respondent No. 1. It is to be stated at the cost of repetition that the order/letter of respondent No. 1 is dated 28-4-2001 and in pursuance thereof the letter/order of the respondent No. 2 made is of 2-5-2001. These petitions have been filed by the petitioners on 15-5-2001. No question does arise of continuing the petitioners with the studies in B.Ed. courses from 2-5-2001 to 15-5-2001 and in substance till the day on which this Court has been pleased to grant stay i.e. upto 17-5-2001. Thereafter the petitioners are continuing in the college only on the basis of the interim relief granted by the Court which is always subject to the final decision in the petitions. The matter if considered from this aspect the petitioners have hardly continued in the course for few days i.e. from 28-4-2001 to 2-5-2001. That is one aspect .

48. There is yet another aspect and if the matter is examined and considered in light thereof, we can reach to the same conclusion. In case of these considerations what is projected, urged and prayed by the learned counsel for the petitioners, if any relief is

granted to the petitioners it will result in depriving the right of admission to many candidates who are higher than the petitioners in the merit list. One of the meritorious candidates has also approached the Court but ultimately could not get the admission as many other meritorious candidates than her could not be given admission. Miss Ritu Singh who filed petition in the Court has not been given admission to the B.Ed. course by respondent No. 1 for the reason that as per her merit, she secured less marks in the PTET than many candidates and she cannot be given admission. The reference here may be had to the letter of respondent No. 1 dated 28-4-2001 addressed to her which reads as under :-

MOHANLAL SUKHADIA UNIVERSITY
OFFICE OF THE CO-ORDINATOR, PTET-2000
C-9, DURGA NURSERY ROAD,
UDAIPUR-313001
No. MLsu/PTET/2000/4783-86

Dated 28-4-2001.

Miss. Ritu Singh
D/o Shri Prahalad Singh, ASI
Near Deen Dayal Park,
Bhpur Pura Ward,
BARAN (Raj.)

This is in continuation to this office letter No. 3773-74 dated : 24-4-2001. Your complaint regarding admission of Miss Reena Jain at 352 marks was examined by this officer. Her admission was wrongly made because of wrong subject combinations for which she was not eligible. Her admission has been cancelled by this office with immediate effect. Along with her, two more admissions of similar nature have been cancelled. We have also checked from our records that your name does not come in current merit list of candidates of your category and, therefore, it is not possible to grant admission because of low marks (400) secured by you. After cancellation of these admissions in your district/category, your grievance of low marks admissions stands disposed off both at the same time. You can not be granted admission. This is for your information.

(L.N. VYAS)
CO-ORDINATOR

Copy to Hon'ble Justice K.S Rathore, Rajasthan High Court, Jaipur Bench.

CO-ORDINATOR"

49. Injustice which was done to Miss Ritu Singh by not giving the admission to her to B.Ed.course though the petitioner Reena Jain stands at lower merit was given admission has been undone by cancellation of the admission of the petitioner Reena Jain. Miss Ritu Singh could not have been given admission even after cancellation of the admission of the petitioner Reena Jain looking to her position in the merit list. If Reena Jain is allowed to continue and complete the course and further to get the degree, it will result in causing grave and serious injustice as well as hardship to Miss Ritu Singh. It is not the case of either of the counsel for the parties that Ritu Singh has carried the matter in the Court. Miss Ritu Singh has not carried the matter further may be for the reasons that Reena Jain's admission is cancelled and otherwise also as per her merits secured in PTET she stands at lower merit number. From her this merit position she could not have been brought to the level of the candidate who secured 428 marks. The case of Miss Ritu Singh and Reena Jain is identical. In case Ritu Singh could not have been given admission as good numbers of candidates above her in the merit list are there but those could not get the admission to B.Ed. course because of cut off marks, how far it is justified, reasonable, fair and equitable to continue Miss Reena Jain petitioner with the course and get the degree. In case this is done by the Court, it will result in hostile discrimination among one class of persons. Miss Reena Jain and Miss Ritu Singh stand on same footing and in case Miss Ritu Singh could not have been given admission because of her position in the merit list how it is justified to permit indirectly Miss Reena Jain to continue with the studies and get the degree by the Court under its extraordinary equitable jurisdiction. If it is done, it will certainly result in perpetuating not only illegality but unconstitutionality as well as to affirm the admission given to these petitioners de hors the merit which is the only criteria and consideration for the admission to the B.Ed. course.

50. Similar is the case with another petitioner viz. Pinky Jain, She also does not stand in merit, Above her there are three more meritorious candidates who could not get the admission and in case her claim is accepted, it will result in making the hostile discrimination. Not only this will result in perpetuating illegality by the Court confirming her illegal admission indirectly by continuing her in the B.Ed. course. In these matters the decisions on which the reliance has been placed by the learned counsel for the petitioners are of little help to them.

51. During the course of arguments, learned counsel for the petitioners has raised a contention that on cancellation of the admission of these two petitioners two seats at the respondent No. 2 College shall remain vacant and this will not give any benefit to those candidates who are above in the merit than the petitioners. This is also again a contention though on the face of it looks attractive but if we go by the substance of the matter is of little help to the petitioners. What will happen to these two seats it is not the concern of the Court. The Court has to look into the legality of the admissions of these two petitioners in the B.Ed. course. In case this Court protects the petitioners though they could not have got the admission in B.Ed. course undisputedly because of their merit position in the merit list only on these fortuitous circumstances it will give a heart burning and pains to as many as 21 candidates. Those candidates will get this impression that the candidates who can manipulate the admissions and go to the Court ultimately get the desired results. This way if these petitioners are protected on the basis of these fortuitous circumstances, it will give a wrong message to the people as well as it will result in encouragement of illegal admission as a result of corruption, favouritism and nepotism etc. This way the Court will permit the admissions made in total disregard and violation of the merits which is the only criteria and consideration for the admission to the B.Ed. courses. The law is almost well settled that this Court sitting under Article 226 of the Constitution will not perpetuate any illegality. This Court sitting under Article 226 of the Constitution may decline to or refuse to issue a writ of mandamus or *certiorari* where effect of the quashing and setting aside of the impugned order would be restoration of an illegal order. The reference here fruitfully may be had to the decision of the Apex Court in case of *Gadde Venkateswara Rao v. Government of Andhra Pradesh*¹¹ and two decisions of this Court in case of *Jagan Singh v. State Transport Appellate Tribunal, Rajasthan*¹² *Himmat Jain v. State of Rajasthan*,¹³ Reference may be had also to one decision of the Kerala High Court in case of *A.M. Mani v. Kerala State Electricity Board represented by its Secretary, Trivandrum*,¹⁴ and two decisions of Patna High Court in case of *Devendra Prasad Gupta v. State of Bihar*,¹⁵ and *Chintamani Sharan Nath Sahadeo v. State of Bihar*,¹⁶

52. The admissions of these petitioners are undisputedly contrary to the admission rules to the B. Ed. courses and the respondent No. 1 has not committed any illegality whatsoever to cancel their admission. In case the orders dated 28-4-2001 and 2-5-2001 are quashed and set aside this Court will restore the admission of the petitioners which undisputedly are *per se* illegal being de hors the merits and admission rules. This is not permissible to the Court sitting under Article 226 of the Constitution. In the facts of

these cases it is not equitable also to continue these two petitioners with the course and complete it and get the degree. This equity claims to have been created in favour of the petitioners on the basis of these two fortuitous circumstances viz. first that they have continued for a period from 20-1-2001 to 1-5-2001 by the college and from 18-5-2001 till date under the order of this Court. Leaving apart the question of *bonafide* of the petitioners as well as respondent No. 1 it is an undisputed fact that the admissions given to the petitioners were not legal. Some time may have been taken by the authority/officer to detect the mistake committed by it/them in making the admission. This mistake some time is being detected on their own or some time they are forced to detect under the Court's order or on the complaint filed by the candidates who have wrongly been denied the admission despite merits.

53. Here in this case Miss Ritu Singh has approached this Court and on its direction the exercise has been undertaken by the respondent No. 1 ultimately it is detected that these two petitioners have illegally been given admission at respondent No. 2 College. After this no time whatsoever has been taken by the respondents in taking the action against the petitioners. The decision in Ritu Singh's matter was given by this Court on 13-4-2001 and within very short period thereafter this exercise has been undertaken, completed and the admissions of the petitioners were cancelled. So looking to and examining these two cases from any angle, I do not find that any equity is created in favour of the petitioners which justifies their continuation with the course and to permit them to complete the course and get the degree. Be that as it may be this question of equity in favour of the litigant is to be considered with reference to the illegality committed by respondents in giving the admissions to them. The petitioners in case are permitted to continue with the course, complete it and get the degree, it will result in perpetuating illegality only on this abstract consideration of equities. Equity does not mean to protect, continue and culminate ultimately in conferring of the degrees on the petitioners only on the basis of these two fortuitous circumstances. If the Courts proceeded with these considerations in these matters certainly it will result in perpetuating illegality and if there is conflict between the illegalities committed in giving admissions to the petitioners and equity, I am of the opinion that equity may not be given weightage in all the cases. Secondly the matter is to be considered with reference to those candidates who could not manipulate or manure the admission in the B.Ed. course though they are more meritorious than the petitioners. The reference here fruitfully may be had to the decision of the Apex Court in case of *Council for Indian School Certificate Examination v. Isha Mittal* ¹⁷ Though that matter

has come up before the Hon'ble Supreme Court against the interim order passed by the High Court but therein it is held that considerations of equity do not permit the High Court to pass an order which is contrary to law. This what if this contention of the learned counsel for the petitioners is accepted, the Court will do in these cases. The admissions of the petitioners are admittedly illegal and result of setting aside of the order of possession No. 1 of cancelling their admission will be restoration of the illegal admissions. In these facts only on the basis of this claim of equity no such order can be passed nor any protection can be given to the petitioners.

54. The reference may be had to another decision of the Apex Court in case of *Mallikarajuna Mudhagal Nagappa v. State of Karnataka* ¹⁸ That is the case directly on the issue of the admission to the educational institution. There their Lordships of the Supreme Court observed that they are not impressed by the fact that the students are before the Court challenging the orders of department that they cannot be permitted to take the examination. If their admission was not valid and was beyond the permitted quota of 60, the Court cannot help them. The reference may be had to other decisions of the Apex Court in case of *State of Punjab v. Renuka Singla* ¹⁹ and *State of Maharashtra v. Vikas Sahebrao Roundale*, ²⁰ In the first case in para No. 8 of the judgment, their Lordships of the Supreme Court observed as under :-

8. The admission in medical course throughout India is governed by different statutory provisions, including regulations framed under different Acts. During last several years efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter attempt is also apparent and discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students."

55. In case of *State of Maharashtra v. Vikas Sahebra Roundale* (1992 (4) SCC 434 : (AIR 1992 SC 1926) (supra), their Lordships of the Supreme Court, in para No. 12 (of SCC) : (Para 11 of AIR) of the judgment, observed as under :-

Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc."

56. In view of the disputed facts of these cases and the decisions of their Lordships of the Supreme Court in cases of *Mallikarjuna Mudhagal Nagappa v. State of Karnataka*²¹ *State of Punjab v. Renuka Singla*,²² and *State of Maharashtra v. Vikas Sahebrao Roundale* (AIR 1992 SC 1926) (supra) I do not find it to be a fit case to permit these petitioners to continue and complete the course and get the degree of the B.Ed. No. equity whatsoever is there in favour of the petitioners which may justify their continuation with the studies in B.Ed. that is to indirectly quash and set aside the order of respondent Nos. 1 and 2 to cancel the admission of the petitioners. A thing which is not legally permissible to be done directly cannot be done by the Court indirectly.

57. In the result these petitions fail and the same are dismissed but without any order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1986 SC 1448
2. AIR 1987 SC 2305
3. AIR 1994 SC 1448
4. AIR 1995 Raj 44
5. (1987) 72 RajLR 832
6. (1984) 1 SCC 43 : (AIR 1984 SC 273)
7. (1996) 3 SCC 364 : (AIR 1996 SC 1669)
8. (1996) 5 SCC 460 : (AIR 1996 SC 2736)
9. (1980) 4 SCC 379 : AIR 1981 SC 136
10. (2000) 7 SCC 529 : (AIR 2000 SC 2783)

11. AIR 1966 SC 828
12. AIR 1980 Raj 1 (FB)
13. AIR 1994Raj 53
14. AIR 1968 Ker76 (FB)
15. AIR 1977 Pat 166
16. AIR 1990 Pat 165
17. (2000) 7 SCC 521
18. (2000) 7 SCC 238 : (AIR 2000 SC 2976)
19. (1994) 1 SCC 175 : (AIR 1994 SC 595)
20. (1992) 4 SCC 435 : (AIR 1992 SC 1926)
21. (AIR 2000 SC 2976)
22. (AIR 1994 SC 595)