

AIR 1981 All 194

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 2962 of 1979

Sushil Kumar
Srivastava and Others

APPELLANT

Vs

Principal, Industrial
Training Institute,
Faizabad and Another

RESPONDENT

Date of Decision: Jan. 11, 1980

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1981 All 194

Hon'ble Judges: T.S. Misra, J; K.S. Varma, J

Bench: Division Bench

Advocate: S.L. Varma, for the Appellant;

Final Decision: Dismissed

Judgement

T.S. Misra, J.

This petition under Article 226 of the Constitution arises in the following circumstances:--

2. There are 67 Industrial Training Institute in Uttar Pradesh in which there are 26,560 sanctioned seats in 43 Engineering and Non-Engineering Trades, Such an Industrial Training Institute also exists at Faizabad where training is imparted in 11 Engineering and Non-Engineering Trades. Three hundred and ninety-two total seats are sanctioned for the Institute out of which 160 seats are sanctioned for the second year classes. In August 1970 admissions were required to be made only against 232 seats in ten Trades vide admission circular of the Directorate of Training and Employment, Lucknow Dated 26th June, 1979. The State Government has appointed an Advisory Committee vide G. O. No. 2278/36.6.36 (T)/79 dated 26th June, 1978 to study the need of the industry in the region and suggest measures to adopt the training programmes to meet local requirements. The functions of this Advisory Committee have been stated in the said Government Order.

One of the functions of the Advisory Committee is to select boys on the basis of their merit for receiving training at the Institute. Such an Advisory committee is also constituted at Faizabad. The Principal is required to prepare a list of the candidates in accordance with their merit and then place it before the Advisory committee. The committee is to check and ensure that the admissions are made strictly according to the merit and according to the Government Order on the subject. The State Government vide G. O. No. 2582/36-6-33 (T) 76 dated 25th August 1977 had decided for the reservation of seats in Industrial Training Institutes at the time of admission.

3. It appears from the supplementary counter-affidavit that 2937 application forms were sold from the Industrial Training Institute, Faizabad up to 25th July, 1979 and that 2059 application forms were received up to 30-7-1979. These applications were scrutinised and checked under the guidance of the Principal, Industrial Training Institute, Faizabad and were sorted out in different categories. The percentage of marks in case of each candidate in the qualifying examinations or in any higher examination were calculated and finally the merit lists were prepared on the basis of their highest percentage of marks as per instructions contained in the admission circular of the Directorate dated 29th June. The Advisory Committee was to finalise the main lists of 232 candidates on the basis of merit lists and another waiting list of 161 candidates was to be drawn up on the basis of the merit list. The principal placed the merit list prepared by him before the Advisory committee on 9th August, 1979. It is further revealed from the said supplementary counter-affidavit that all the application forms received in the said institute were also put up before the Advisory Committee on 9th August, 1979 and the members of the committee were apprised of the instructions of the Government in connection with admissions. The members of the committee checked various application forms. The Chairman of the committee at Faizabad is a non-official member. It so happened that in the meeting held on 9th August, 1979 the majority of the members present were non-official. It is averred in the supplementary counter-affidavit that they did not agree to approve the lists for admission in toto which were prepared by the principal according to the instructions of the Government and after a long discussion and persuasion by the principal the committee agreed to approve the names of 175 candidates on the basis of merit. However only 102 candidates turned up for admission out of those 175 candidates. They were duly admitted. In this connection it is further averred that in spite of the opposition by the Principal the Chairman was authorised to prepare a second list of candidates to accommodate their own recommendation irrespective of the merit of the candidates vide the minutes of the meeting of the Advisory Committee dated 9th August, 1979 a copy of which is Annexure A-3 to the counter-affidavit. It further appears that a supplementary list of 292 candidates on 27th August, 1979 was prepared by the Chairman in consultation with the non-official members. Out of these 292 candidates a list of 135 candidates was declared under the signature of the principal whereas a list of remaining 157 candidates was declared under the signature of the Chairman only and the Principal refused to sign that list of 157 candidates. It is averred that the principal was asked to admit all the candidates of the supplementary list. The principal, however, did

not agree to admit the candidates who were of the lower merit. The principal also did not agree to increase the number of admissions beyond the number of sanctioned seats. However, as 31st August, 1979 was the last date for admission, hence it is averred, that the principal under duress and threat had to admit 222 candidates out of the list of 292 who were available on 31st August, 1979. It is in this way that 324 candidates had to be admitted up to 31st August, 1979 against the sanctioned strength of 232 seats: consequently, on 4th September, 1979 the Deputy Director, Varanasi Zone was apprised of the circumstance in which admissions had to be made in contravention of the Government Order. Eventually through the Director of Training and Employment U. P., Lucknow the matter was brought to the notice of the Secretary. Department of Labour of the State Government and then a decision was taken by the State Government that all admissions which had been made otherwise than in accordance with the instructions laid down by the State Government and the G. O. Annexure A-2 dated 26th June. 1978 and were not in accordance with merit should be cancelled and thereupon necessary instructions were issued telegraphically to the principals to cancel such irregular admissions and proceed to fill up the vacant seats by admitting candidates in accordance with merit; hence the Principal of the Institute at Faizabad by his order dated 11th October, 1979 circulated a list of person who had been irregularly and illegally recommended for admission and whose admissions were sought to be cancelled. The Principal has averred that in spite of his best endeavour to have the notice and order served individually on each candidate he could not succeed as none of the candidates in spite of the fact that they had read the order refused to acknowledge the same and the said order along with the list of candidates whose admissions were cancelled was also notified on the notice board. After the cancellation was made, as many as 68 students were admitted on the basis of their merit and it is alleged that these students are being trained in the trades of their choice. The petitioners being aggrieved by the order of cancellation of their admission have filed the instant petition.

4. The case of the petitioners is that they are all bona fide students of the First Year class of the Industrial Training Institute at Faizabad. They were admitted to the said Institute in the month of August, 1979 for training in various trades after having been found qualified for the same and after being selected by a Selection Committee appointed by the Government. On their admission they deposited caution money of Rs. 25/- and they had been continuously attending their classes and receiving education till 12th October, 1979. When they went to the Institute on 15th October, 1979, they were not allowed to do so. Then they came to know that their names were struck out from the rolls of the Institute. The petitioners contend that after having been properly selected through a Government appointed Selection Committee and having secured admission and also having paid caution money as well as having attended their classes for about two months, the petitioners' names could not be legally struck out of the rolls without even giving them an opportunity of being heard. They also alleged that they were taking the courses of their training to enter various trades to earn their livelihood and if they are not allowed to continue their study courses and complete their training, their whole life and career will be

ruined and they will not be able to earn any livelihood. The counter-affidavit and supplementary counter-affidavit were filed on behalf of the opposite-parties. Rejoinder-affidavit has also been filed reiterating the averments in the petition and asserting that the petitioners were admitted on the basis of merit and having been found most suitable at the selection and that after the petitioners' selection and admission had been made, the opposite-parties are estopped from canceling their names.

5. The principal question which falls for determination is whether on the facts and circumstances stated herein-above the petitioners' names could be struck out of the rolls of the Industrial Training Institute at Faizabad. The petitioners admittedly had submitted their application seeking admission to the said Institute for receiving training in the trades specified in the applications. There were other applicants also. The applications received by the Principal of the Institute ran in four figures. The sanctioned strength was, however, only 232 and admissions were to be made only against these 232 seats. The Government has appointed an Advisory Committee to make selection. The Government order prescribes the procedure for the preparation of merit lists of different categories. It requires the principal to prepare the merit list according to the procedure laid down in the said Government Order. It further requires that the merit list so prepared by the principal shall be put up by him before the Advisory committee in its meeting. The Chairman of the Advisory Committee, is a non-official member. It consists of certain official members and also certain other non-official members. The said Government Order requires that the Advisory committee will select the names of the candidates for receiving training in each trade on the basis of their merit. In the instant case the principal after receiving the applications prepared a list of candidates for each trade on the basis of merit. That list was placed along with all the applications before the Advisory Committee in its meeting held on 9th August, 1979. The meeting was presided by its Chairman. The Principal is a Secretary of that Advisory Committee. He was also present at the meeting. Other non-official members were also present. It appears from Annexure A-3 to the counter-affidavit which is a copy of the minutes of the said meeting held on 9th August, 1979 that the Advisory Committee did not approve of the entire list prepared by the principal. The Advisory Committee, however, agreed to approve of the names of 175 candidates on the basis of merit. As stated earlier only 102 candidates turned up for admission out of the said 175 candidates. The committee had authorised the Chairman to prepare a second list of candidates to accommodate their own recommendations. This was objected to by the principal who insisted that the list should be prepared on the basis of merit alone. A supplementary list of 292 candidates was thereafter prepared on 27th August, 1979 by the Chairman. Out of these 292 candidates a list of 135 was declared under the signature of the principal whereas a list of 157 was declared under the signature of the Chairman only and the principal declined to sign on that list. The principal did not agree to admit candidates who were of the lower merit nor did he consent to increase the number of admissions beyond the sanctioned strength. It is averred by the Principal in his supplementary counter-affidavit dated 19th November, 1979 that as 31st August, 1979 was the last date for admission, he under duress and threat had to admit

222 candidates out of the list of 292 candidates who were available on 31st August, 1979. Thus 324 admissions had been done against 232 sanctioned seats. The principal brought all these facts to the notice of his superior authority, namely, the Deputy Director, Training and Apprenticeship, Varanasi Zone and ultimately the Secretary to the Department of Labour, Government of Uttar Pradesh was apprised of the situation by the Director of Training and Employment, U. P. Lucknow. The State Government then took a decision in the matter to the effect that all admissions which had been made in contravention of G. O. No. 2280/36-6-36 (T)/78 dated 26th June, 1978 stood cancelled and the Principals of the Institutes were asked to ensure admissions strictly on merit by 25th positively. This decision was communicated to all the principals of the Industrial Training Institutes Uttar Pradesh and all District Magistrates of Uttar Pradesh who were requested to maintain law and order in the Industrial Training Institutes. The Principal, Industrial Training Institute thereupon struck out the names of the petitioners of the rolls. Now certain other persons have been admitted in the Institute and are receiving the training who, according to the principal, were entitled to be admitted on the basis of their position in the merit list. We asked the Principal to produce before us a chart showing the merit of the petitioners in comparison with the merit of those who have now been admitted. The Principal has accordingly submitted that chart. We have perused it. That chart discloses that on merit the petitioners were inferior to those who have now been admitted.

6. For the petitioners it was urged that as the petitioners had been admitted to the Institute for receiving training and as they had paid caution money and had been attending their classes for about two months" the opposite parties are estopped from asserting that the petitioners could not have been admitted on the basis of their merits. Further, if they would not be permitted to continue with their training, their whole life and career will be ruined and they will not be able to earn any livelihood. In support of this contention the learned counsel for the petitioner placed reliance on [Purshottam Das Dulichand Zargar and Another Vs. Board of Secondary Education Wright Town and Others](#), [Pratima Das Vs. State of Orissa and Others](#), [Shri Krishnan Vs. The Kurukshetra University, Kurukshetra](#), [Anil Kumar Srivastava Vs. University of Allahabad and Another](#), and Scarf v. Jardine (1882) 7 AC 345).

7. In the case of Purshottam Das (supra) the petitioner was allowed to appear for practical examination and was allotted a roll number but subsequently the Board decided not to permit him to appear for the theory examinations as he had not attended the minimum number of lectures, delivered in his subjects for qualifying himself for the examination and that under the rules in force, the deficiency in his attendance could not be condoned. Under the Regulations framed by the M. P. Secondary Education Board, the Chairman is under an obligation to exercise one way or the other his discretion in the matter of condonation of the attendance of an examinee when moved to do so. In view of the fact that the applicant was allowed to appear for practical examination and was allotted a roll number, it was held that the deficiency in the petitioners' attendance was such which could be condoned and was condoned under the regulations which were

applicable to him, and it is in these circumstances that it was held that the Board was under an obligation to permit the applicant to take theory examination. On these peculiar facts it was held that once the Chairman had taken a decision in exercise of his discretionary powers, his discretion in relation to that matter is exhausted and he could not again claim to revise his decision already taken by exercising his discretion a second time. The case of *Scarf v. Jardine* (1882) 7 AC 345 was relied upon. The case of *Purshottam Das* (supra) is of no help to the petitioners because it is quite evident from the minutes of the meeting of the Advisory Committee held on 9th Aug., 1979 that the Principal of the Institute was insistent for the compliance of the Government order dated 26th June, 1978 and that the admissions should be made strictly on merits. The majority in the meeting selected only 175 candidates on the basis of merit. Out of these 102 candidates turned up for admission. The supplementary list prepared on 27th August, 1979 by the Chairman was not in accordance with the procedure laid down by the Government order dated 26th June, 1978. It is, therefore, not a case where a decision was taken in exercise of its discretionary powers. In fact the Advisory Committee was under an obligation to select persons in accordance with the procedure laid down in the G. O. of 26th June, 1978. The Advisory Committee had to function within the limits of the Government Order No. 2279/36-6-36/T/78 dated 26th June, 1978 and the Government Order No. 2280/36-6-36(T)/78 dated 26th June, 1978 and had no discretionary power to recommend candidates securing lower percentage of marks in the minimum qualifying examination and leaving out those candidates who had secured marks of higher percentage in the qualifying examination. In this view of the matter the principles enunciated in *Scarf v. Jardine* (supra) are also not attracted to the facts and circumstances of the case and that ruling, therefore, does not apply to the instant case.

8. In [Pratima Das Vs. State of Orissa and Others](#), the petitioner while studying in the B. Sc. class was selected for admission to the M. B. B. S. course on the basis of marks obtained in the competitive entrance examination for the M. B. B. S. Course. She left her B. Sc. course and was admitted to the Medical College. Sometime thereafter her admission was cancelled as it was found that in the entrance examination she had in fact secured lesser marks than some other candidates who were not selected. It was found by the court that the petitioner had all the qualifications prescribed for selection. Apart from heavy financial loss which the petitioner had suffered through the negligence of the authorities, it was not possible for the petitioner to go back to her former college and pursue her studies there. In these circumstances it was held that the plea of estoppel was attracted and the order cancelling her admission was liable to be quashed. The principle of estoppel was applied in the case of *Pratima Das* (supra) on the ground that she had changed her position substantially to her prejudice on the representation of the Selection Board and it was found impossible to restore status quo inasmuch as it was not possible for the petitioner to go back to her old college and pursue the course of studies from which she had withdrawn halfway. In the instant case it has not been made out that the petitioners had changed their position substantially to their prejudice on the representation of the Advisory Committee and that it would now be impossible to restore

the status quo ante. They have merely alleged that "if they are not allowed to continue their study courses and complete their training, their whole life and career will be ruined and they will not be able to earn any livelihood". They have not said that it would be impossible to restore the status quo ante. The learned Judges in Pratima Das case had observed:--

"We would agree with learned Additional Government Advocate that if there had been a statutory prescription in regard to admission into the Medical College and the petitioner was wanting any of these requirements, there might have been some force in his submission that estoppel may not operate."

In Pratima Das" case the petitioner admittedly had all the qualifications as laid down by the University. In the case in hand the condition was that persons would be admitted according to their position in the merit list prepared in the manner laid down in the Government Order dated 26th June, 1978. The petitioners obviously were not selected in accordance with their position on the merit list.

9. In [Shri Krishnan Vs. The Kurukshetra University, Kurukshetra](#), it was held that once the candidate is allowed to take the examination rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. These observations were made on the peculiar facts of that case. Before issuing the admission card to a student to appear at part I Law Examination in April 1972 it was the duty of the University authorities to scrutinise the admission form filled by the student in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements. It was further observed that if neither the Head of the Department nor the University authorities took care to scrutinise the admission form then in not disclosing the shortage of percentage in attendance the question of the candidate committing a fraud did not arise. Similarly, when the candidate was allowed to appear at the part II Law Examination in May 1973, the University authorities had no jurisdiction to cancel his candidature for that examination. On these facts it was held that if the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the Examination, then by force of the University Statute the University had no power to withdraw the candidature of the candidate. In the present case the principal had prepared the list strictly in accordance with the procedure laid down in the Government order aforesaid and also insisted in the meeting of the Advisory Committee on 9th August, 1979 that admissions should be made only in accordance with merits as laid down in the aforesaid Government order out he was overruled. He therefore, informed his superior officer who in turn informed the Government and he ultimately took a decision to cancel the admissions so made. It was, therefore, not a case where the principal or the Government had acquiesced in the infirmities or illegalities.

10. In [Anil Kumar Srivastava Vs. University of Allahabad and Another](#), the principle of estoppel was applied in these circumstances. Where the University represented to an examinee for M. Sc. (Part-I) examination that he passed that examination by forwarding the mark list showing him to be successful and subsequently confirmed the said representation by informing him in response to his application for scrutiny of certain answer books that there was no change in the marks obtained by him, the University could not, after his having completed M. Sc. (Final) course as per requirement, prohibit him on the eve of M. Sc. (Final) examination, from appearing at that examination on the plea that he, in fact, did not pass M. Sc. (Previous) Examination. This case obviously does not apply to the facts of the instant case.

11. In our view, the principle of estoppel is not attracted to the facts and circumstances of the case in hand. True it is that the Government ought to set higher standard in its dealings and relations with citizens and the action of a duly authorised Government agent acting within the scope of his authority ought to be binding on the Government. If the acts or omissions of the officers of the Government are within the scope of their authority and are not otherwise impermissible under the law, they will work estoppel against the Government but no representation or promise made by an officer can preclude the Government from enforcing a statutory or legal prescription. The doctrine of estoppel cannot be availed of to permit and condone a breach of the law. It cannot be gainsaid that as the Government has the power to admit students in the Institute for imparting training in specified subjects, it can lay down conditions under which it would allow admissions. To achieve uniformity and certainty in the exercise of such executive power and to avoid discrimination the Government would have to frame guidelines which, however, would be in the form of administrative instructions. If these administrative instructions were to lay down conditions the Government can insist that the satisfaction of such conditions would be condition precedent to obtaining admissions in the Institute, Non-fulfillment of such condition would obviously entail denial or withdrawal of admission. These administrative instructions thus govern the terms on which admission can be secured. They do furnish the necessary and valuable guide-lines and any departure therefrom will vitiate the order of admission.

12. The Advisory Body was bound to conform to the standard or norm laid down in the Government order dated 26th June, 1978 which required that selection shall be made on the basis of merits. That Government order prescribed the field of eligibility. Once such standard or norm was laid down, the Advisory Body or for that the Principal was not entitled to depart from it and admit those persons who did not satisfy the condition of eligibility prescribed by the standard or norm. It could not arbitrarily pick and choose certain persons and grant them admit card though they had shown inferior results in the minimum qualifying examination than other persons who were subsequently admitted. The Principal prepared the list in accordance with the standard or norm laid down in the said Government order but the Advisory Body departed from the norm and selected persons who did not fulfill the conditions of eligibility. The Principal though at first resisted

but was, it seems, subdued and he had to issue admit card but at the same time he brought the matter to the notice of the Government through proper channel. The Government acted promptly and cancelled the admissions of those persons who did not satisfy the conditions of eligibility prescribed by the aforesaid G. O. of 26th June, 1978. The power, to undo illegalities is inherent in the Government. To permit admission to less deserving than those who had secured more marks was to do injustice to the latter. The order canceling the admission of the petitioners and striking out their names of the rolls of Industrial Training Institute, Faizabad was, therefore, neither arbitrary nor mala fide nor unjust. It is also not illegal. The question of violation of, principles of natural justice does not arise.

13. We find no merits in this petition which is dismissed but in the circumstances of the case without costs.