

T. Sharda Vs. the Principal, Visveswariah College of Engineering, Bangalore and ors.

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Court : Karnataka

Decided On : Dec-28-1977

Reported in : AIR1978Kant111

Judge : K.S. Puttaswamy, J.

Acts : [Constitution of India](#) - Articles 14, 15 and 226

Appeal No. : Writ Petn. No. 10162 of 1977

Appellant : T. Sharda

Respondent : The Principal, Visveswariah College of Engineering, Bangalore and ors.

Advocate for Def. : S. Vijaya Shankar, Adv.

Advocate for Pet/Ap. : M. Narayanaswamy, Adv.

Judgement :

ORDER

1. At the end of the 4th Semester, the petitioner, respondent Nos. 3 and 4 and several others sought for a change from Electrical Engineering to Electronics for which there appears to be keen competition. On the basis of merit and

reservations generally made to Backward classes, Scheduled Castes and Scheduled Tribes in Educational Institutions, the University authorities have permitted respondent Nos. 3 and 4 and 5 others and have denied the demand of the petitioner for a seat in Electronics for which reason she has moved this Court for a writ of mandamus to respondent Nos. 1 and 2 to admit her to the 5th Semester in Electronics either in addition or in supersession of respondent Nos. 3 and 4.

2. In the original and the additional statement of objections filed, respondent Nos. 1 and 2 have pleaded that transfers to the subject of Electronics have been permitted on the basis of merit and reservation to Backward Classes and that in effecting transfers they have adopted a fair practice and procedure and that respondent No. 4 is more meritorious than the petitioner and that the transfer of respondent No. 3 who is a member of a Backward class, though he has secured lesser marks than the petitioner is justified.

3. In the merit list of students based on their performance at the 1st, 2nd, 3rd and 4th Semesters, respondent No. 4 has secured higher marks than the petitioner and he occupies Rank No. 7 while the petitioner occupies Rank No. 8. As it is now found that respondent No. 4 is more meritorious than the petitioner, her claim against him is factually unfounded and is therefore liable to be rejected. I, therefore, reject the claim of the petitioner against respondent No. 4.

4. So far as respondent No. 3 is concerned, the case of the University is that though he is less meritorious than the petitioner, he has been preferred on the ground that he is a member of the Backward Classes. It is not the case of the petitioner that she is a member of the Backward Classes. In my view, the University in preferring respondent No. 3 on the ground that he is a member of the Backward classes, has not contravened the constitutional guarantee of equality of opportunity or has not committed any manifest illegality resulting in substantial failure of justice to the petitioner,

5. Shri M. Narayana Swamy, learned counsel for the petitioner, strenuously urged that in the absence of legislation or an express order providing for reservations to Backward Classes, Scheduled Castes and Scheduled Tribes for allotting seats to

Electronics, the action of the University in preferring respondent No. 3 is illegal and impermissible. For purposes of this case, I will assume that Shri Narayana Swamy is right in his submission. But that does not necessarily mean that I should strike down the selection of respondent No. 3 and direct the allotment of that seat to the petitioner. It is not the case of the University that there is an express order providing for reservations to Backward Classes. The case of the University is that the principles of reservations to Backward Classes followed by it in permitting transfers to Electronics is a fair practice and in adopting such a practice and procedure, it has not violated the equality clause enshrined in Article 14 of the Constitution. In my view, whatever may be the legality or otherwise of the same, the University authorities in providing seats to Electronics have followed a fair practice and procedure having due regard to the constitutional provisions and realities of the conditions in our Country and have not 'consciously committed an infraction of Article 14 of the Constitution or any manifest illegality to deprive the just claims of the petitioner. In my view, the University by giving effect to the reservations to Backward Classes has done substantial justice to whom justice is due. Assuming that there is any illegality in providing for reservations to Backward Classes without an express order, the same has not resulted in any failure of justice to the petitioner. On the other hand by accepting an extremely formal and a legalistic approach this Court would be doing grave injustice to respondent No. 3 to whom justice has been meted out by the authorities. I am therefore of the view that whatever may be the illegality, it is not a fit case in which I should exercise the extraordinary power conferred on this Court under Article 226 of the Constitution.

6. Shri S. Vijaya Shankar, learned counsel for respondent Nos. 1 and 2 contended that the 5th Semester for which the petitioner is seeking for admission and to which respondent No. 3 has already been admitted and has studied, is due to end on 31st December, 1977 and that the petitioner even if inducted by displacing respondent No. 3 or otherwise cannot be -admitted to the said 5th Semester and learn what has not been learnt so far and on that ground also I should decline to exercise the extraordinary power conferred on this Court under Article 226 of the Constitution. Shri M. Narayana Swamy, learned counsel for the petitioner, urged that the petitioner has approached this Court without any delay and that she cannot be blamed for any delay that has taken place and therefore I should not

decline to exercise my power in favour of the petitioner notwithstanding any of the circumstances pleaded by the authorities, For various reasons, which do not require an examination, the position now is that the petitioner cannot join and study the 5th Semester and cannot be inducted to the 6th Semester which is due to commence from the 1st of January, 1978 hopping the 5th Semester. Finally, it would be unjust to unseat respondent No. 3 at this late stage and direct him to commence his studies in another subject from the 5th Semester and thus cause considerable inconvenience and hardship in the prosecution of his studies. For the above reasons, I am of the view that whatever may be the legality or otherwise of the action of the University, it is not a fit case in which I should exercise the extraordinary jurisdiction conferred on this Court under Article 226 of the Constitution in favour of the petitioner.

7. In my view, for all the above reasons, this is not a fit case for the exercise of the power conferred on this Court under Article 226 of the Constitution and therefore the Rule is liable to be discharged. Rule discharged.

8. In the circumstances of the case, I direct the parties to bear their own costs.

9. Writ petition dismissed.

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