

Trilochan Singh v. Maharshi Dayanand University, Rohtak and another (A. L. Bahri, J.)

Supreme Court held that since the excess land allotted to the displaced person was 'Package Deal' property, the same could not be sold nor could it be allowed to be sold to the person by the Managing Officer and that the Chief Settlement Commissioner was competent under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, to cancel the allotment of land in excess of the area the person was entitled to get under the provisions of the Act. The judgment nowhere lays down that the Tehsildar (Sales)-cum-Managing Officer was not competent to make the allotment of land to unsatisfied claimants for making good the deficiency in their allotments.

(12) Consequently, I allow this writ petition and by issuing the writ of *certiorari*, quash the impugned order dated 26th October, 1987 (Annexure P.5), by which the respondents have declined to allot the land in dispute to the petitioners, and further by issuing a writ of *mandamus* direct the respondents to make the quasi permanent allotment of the sub-urban agricultural land situated in Patti Insar (Panipat), District Karnal, as applied for by the petitioners and recommended by the Tehsildar (Sales)-cum-Managing Officer, respondent No. 4 and thereafter to confer proprietary rights in respect thereof on the petitioners in accordance with law, within a period of three months from the date of receipt of this judgment. The petitioners shall also be entitled to the costs of this petition which are quantified at Rs. 1,000.

P.C.G.

Before : A. L. Bahri, J.

TRILOCHAN SINGH,—Petitioner.

versus

MAHARSHI DAYANAND UNIVERSITY, ROHTAK AND
ANOTHER,—Respondents.

Civil Writ Petition No. 11741 of 1988.

30th May, 1989.

Constitution of India, 1950—Articles 226, 227—Maharshi Dayanand University Calendar, Volume-II, 1986 edition, Rules 7, 21—Candidates placed under compartment or failing in B.A. examination—Such

candidates eligible to appear in Supplementary Examination—Candidates provisionally admitted to B.Ed. class—Candidates subsequently clearing supplementary examination—Admission to B.Ed. Course—Whether can be cancelled.

Held, that the contention of the counsel for the University that the relevant time for consideration is the date of admission to the Course and if a candidate was lacking in educational qualification, he could not be allowed to continue the studies and take examination of B.Ed. Course, cannot be accepted. If this contention is accepted, it will operate very harshly to the B.Ed. students, the petitioners, and the like. The petitioners, who are students, are not to suffer their studies. They having attended the Course, though through correspondence, and being eligible for the Course as having passed B.A. Examination in September, 1988, the equity does not demand to reverse the clock and to bring them at the initial stage of the admission and to say that since they were not B.A. at the time of filing of the application for admission, they cannot now continue with the Course and take final examination. This will operate very harshly to the petitioners who at no stage had an opportunity to explain. University having accepted the admission fee cannot now turn around to say that these petitioners were not eligible at the time of admission to B.Ed. Course.

(Paras 9 and 10)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :

- (i) *issue a writ of mandamus, certiorari or any other suitable writ, order or direction directing the respondents not to cancel the admission in the B.Ed. Correspondence Course of the petitioner as the petitioner has already been selected with enrollment No. PB-44831 for the B.Ed. Course through Correspondence by the respondents.*
- (ii) *Further the respondents be directed to allow the petitioner participate in the Personal Contact Programme being organised by the respondents at Ludhiana, Arya College, Ludhiana from 26th December, 1988 to 6th January, 1989 and thereafter permit the petitioner to sit in the examination and declare his result.*
- (iii) *requirement of advance notices to the respondents and filing of certified copies of annexures may kindly be exempted.*
- (iv) *costs of this petition may also be awarded to the petitioner.*
- (v) *costs of this petition may also be awarded to the petitioner.*

Pardeep Gupta, Advocate, for the Petitioner.

J. L. Gupta, Sr. Advocate with Vikrant Sharma, Advocate, for the Respondent.

Trilochan Singh v. Maharshi Dayanand University, Rohtak and another (A. L. Bahri, J.)

ORDER

A. L. Bahri, J.

(1) *Vide* this judgment, a bunch of writ petitions are being disposed of. One of the questions argued is common in all the writ petitions which is formulated as below:—

“Whether the students who had appeared in April in the Final Examination of B.A. having failed or placed in compartment could seek admission to B.Ed. Correspondence Course and afterwards passing B.A. Examination held in September (Supplementary Examination.)”

In two of the cases, facts are being narrated whereas in other cases facts are similar.

(2) The common facts are given as under:—

(3) The M.D. University started B.Ed. Correspondence Course for the first time in the Session 1989-89. It is one year course, Last date for submitting application forms was 31st May, 1988 as given in the prospectus. The admission was open to candidates from all over the country who might otherwise fail to enter Colleges of Education for various reasons. Note at page-2 of the Prospectus issued by the University in this respect reads as under:—

“The candidates whose results have not been declared may deposit admission form on or before 31st May without 1st instalment of fee. However, they are required to submit a proof of appearing in the qualifying examination along with the form. Fee be deposited within ten days from the date of declaration of results failing which their candidature will stand cancelled.

The fee for the Course is payable in three instalments. The first instalment was payable on or before May 31, 1988 and proof of payment of first instalment was to be attached along with the admission form. The second instalment was payable on or before September 20, 1988 and third instalment on February 18, 1989. Now it is the case of the respondents that time for payment of other instalments was extended by the University. On admission, registration card

and identity card were to be issued. The Ordinance-B.A./B.Sc. (Pass) Examinations is given in Maharshi Dayanand University Calendar, Volume-II, 1986 Edition at page-35. For three parts of B.A. (Final), examinations were required to be held. Part-I Examination was to be held at the end of the first year, Part-II at the end of the second year and Part-III at the end of the third year. A Supplementary Examination was required to be held for the candidates reappearing in one subject or otherwise in the month of September of the same year. Relevant extract of rule 7 of this Chapter is as under:—

“A candidate who is eligible to reappear in the subject of an examination of this University shall be granted provisional admission to the next higher class.”

Rule 20 of this Chapter deals with admission to B.A. Part-I and Part-II Examinations whereas rule 21 of this chapter refers to joining M.A. Part-I Examination provisionally by a student who had failed in one subject in B.A. Part-III Examination.

(4) In C.W.P. No. 11741 of 1988 (*Trilochan Singh v. M.D. University and another*), the facts are briefly as under:—

Trilochan Singh passed his B.A. Examination in April, 1988. He applied for admission to the B.Ed. Correspondence Course,—*vide* application, Annexure P.1. First instalment of fee was sent by bank draft,—*vide* letter, Annexure P.2. Along with this letter, Result Card of B.A. (Final) Examination was also sent. Annexure P. 3 is the Result-cum-Detailed Marks Card of the University. The University wrote a letter to Trilochan Singh, copy Annexure P.4, intimating that the bank draft had not been received and fee should be deposited within twenty days; Original Marks Sheet should also be sent; two copies of the Degree and Detailed Marks Certificate should also be sent. Migration Certificate was asked for. Annexure P.5 is the reply to the above letter. It was stated that the Original Degree had not been received from the University. However, Detailed Marks Card was attached with the application for re-evaluation. The Panjab University was requested to supply the Migration Certificate. At this stage, it may be stated that though Trilochan Singh had passed B.A. Examination, he had moved the Panjab University for re-evaluation and afterwards he has placed in Compartment in one subject. Trilochan Singh cleared the Compartment in the Supplementary Examination held in September in the same year. Detailed Marks Sheet of the said examination in Annexure P. 7 Trilochan

Trilochan Singh v. Maharshi Dayanand University, Rohtak and another (A. L. Bahri, J.)

Singh had been getting regularly written instructions of the B.Ed. Correspondence Course from the respondent-University. On coming to know that the respondent-University was cancelling admission of several students who had not passed B.A. Examination held in April, 1988 approached this Court with this writ petition for direction to the respondents not to cancel his admission in the B.Ed. Correspondence Course. In the written statement filed on behalf of the University, it was alleged that since the petitioner had submitted Detailed Marks Sheet of April Examination which showed that he had passed B.A. Examination, he was admitted to B.Ed. Correspondence Course. However, on re-evaluation for April, 1988 Examination, his result was revised from Pass to Compartment in English and Economics as shown in Annexure P.6. He cleared the same in the Supplementary Examination. The duration of B.Ed. Correspondence Course is one year. The petitioner, therefore, was not eligible to continue his studies in the current Session as for all intents and purposes he could not be admitted as he had not passed B.A. Examination held in April, 1988.

(5) In C.W.P. No. 1381 of 1989 (*Raj Bala v. M.D. University and another*), the facts are briefly as under:—

(6) Smt. Raja Bala appeared in B.A. Examination. However, her result was not declared when she applied for admission to B.Ed. Correspondence Course of M.D. University. She filed an admission form to B.Ed. Correspondence Course. *Vide* letter dated July 25, 1988, Smt. Raj Bala was informed when she applied for admission to B.Ed. Correspondence Court that two attested copies of the Degree and Detailed Marks Sheet should be submitted. She was also asked to deposit the instalment fee within twenty days. She was not issued the Identity Card and her father approached the University and came to know that the respondents were not giving her admission because she cleared her compartment paper in English only in September, 1988 and, therefore, was not eligible for admission.

(7) The facts of the other cases are similar that while appearing in B.A. Examination, the candidates were placed in compartment. They sought admission to the B.Ed. Correspondence Course but they were not allowed. They approached this Court by filing the writ petitions and are now continuing with the Course under orders of this Court. These candidates passed the B.A. Examination in the Supplementary Examination held in September, 1988.

(8) Even in the peculiar facts of the case, as noticed above, if it is held that Trilochan Singh was rightly given admission as he had passed B.A. Examination and during the course on re-evaluation he was placed in compartment and finally passed the B.A. Examination in September, 1988 and is allowed to continue with the studies and take the examination and clear it, there will be no reason to deny the same relief to other petitioners in other writ petitions as it would amount to discrimination which is not permitted by law.

(9) The contention of counsel for the University is that the relevant time for consideration is the date of admission to the Course and if a candidate was lacking in educational qualification, he could not be allowed to continue the studies and take Examination of B.Ed. Course. If this contention is accepted, it will operate very harshly to the B.Ed. students, the petitioners, and the like. The petitioners, who are students, are not to suffer their studies. They having attended the Course, though through correspondence, and being eligible for the Course as having passed B.A. Examination in September, 1988, the equity does not demand to reverse the clock and to bring them at the initial stage of the admission and to say that since they were not B.A. at the time of filing of the application for admission, they cannot now continue with the Course and take final examination. This will operate very harshly to the petitioners who at no stage had an opportunity to explain. In the case of Trilochan Singh, everything happened after he had been admitted to the afore-said Course i.e. he applied for re-evaluation of the B.A. Examination papers and on re-evaluation, he was placed in compartment in two subjects and finally he cleared B.A. Examination in September, 1988. Even during the course of the examination, he became eligible for admission to the B.Ed. Course. During all this period, Trilochan Singh had been attending to the Course. It is too late for the University to raise objection to the admission to the B.Ed. Course simply on the ground that during the pendency of the Course, his result was modified and re-modified i.e. modified for the first time when he applied for re-evaluation and from Pass, he was placed in compartment and re-modified i.e. after clearance of the compartment papers, the petitioner was declared Pass in the B.A. Examination. Trilochan Singh is not to suffer in any case on that account in the peculiar facts of the case in hand in his studies in the B.Ed. Course.

(10) To some of the petitioners, provisional admission was given although they were placed in compartment and had applied for admission to the B.Ed. Course. Since these petitioners have passed

Trilochan Singh v. Maharshi Dayanand University, Rohtak and another (A. L. Bahri, J.)

B.A. Examination in September during the Sesion 1987-88 and their admission fee having been accepted by the University, now University cannot turn around to say that these petitioners were not eligible at the time of admission to the B.Ed. Course.

(11) The contention of Shri J. L. Gupta, Senior Advocate appearing on behalf of the University, that only those students who had passed B.A. Examination were eligible for B.Ed. Course cannot be accepted in view of the note given in the Prospectus of B.Ed. Correspondence Course of the University which has been reproduced above. The above note specifically contemplates provisional admission in respect of candidates who had taken final examination and result had not been declared by May 31, 1989, the last date fixed for submitting applications. Even on proof of their having taken part in the Final Examination of B.A., they were to be admitted to the B.Ed. Course. The only limitation is that after completion of the Final Examination, Detailed Marks Sheet should be seen for checking the marks which could be sent within ten days from the declaration of the result. Thus, the note is specific that without passing B.A. Examination, provisional admission to the B.Ed. Course could be allowed. Rule 7 existing at page 38 of the University Calendar, as reproduced above, is also to the same effect. A candidate, who is eligible to reappear in one of the subjects of B.A. Examination, could get provisional admission to the next higher class. Mr. J. L. Gupta, Senior Advocate for the University, argued that rule 7 is applicable only to B.A. Part-II and Part-III Examinations. I am afraid this contention cannot be accepted. This rule is general and would be applicable to all the next higher classes where persons taking B.A. Examination want admission. At this stage, reference may also be made to rules 20 and 21 of this very Ordinance relating to B.A. Examinations. No benefit can be taken from rule 20 as it refers to a candidate who fails in one subject only in B.A. Part-I Examination or Part-II Examination as he would be eligible to join the next higher class i.e. Part-II or Part-III Examination. Rule 21 provides for provisional admission to M.A. Part-I Examination to a candidate appearing in B.A. Part-III Examination. I was told that provisional admission in the Law Course would also be made on obtaining compartment in B.A. Examination. Be that as it may, a perusal of the rules relating to B.A. Examination i.e. Rule 7, it is quite clear that provisional admission could be had in the B.Ed. Course Examination. That being the position, the mere fact that finally the petitioners during pendency of the writ petitions, passed their B.A. Examination

in September will clothe them with the right to complete the Course in B.Ed. Examination. The interest of the students cannot be jeopardised merely on technicalities i.e. in fact they had not passed B.A. Examination when they sought admission to B.Ed. Course.

(12) Mr. J. L. Gupta, Senior Advocate for the respondents, has referred to rule 3 in the Ordinance-Bachelor of Education (B.Ed.) Examination as mentioned in the University Calendar, 1986 Edition, Volume-II, at page 107. According to this rule, a person who possesses the qualification of B.A./B.Sc. with at least forty per cent marks was made eligible to join the Course. According to the counsel, a failed candidate or a compartment case candidate cannot be eligible to join the Course. As already noticed, a right is given to a candidate to pass the same examination in Supplementary Examination. This right is given so that his further studies may not suffer and labour of one year should not go waste. The provisional admission is subject to the candidate passing B.A. (Final) Examination in the Supplementary Examination. On passing B.A. in the Supplementary Examination, the candidate all along remained to be eligible for B.Ed. Course.

(13) On behalf of the petitioners, it has been argued that after allowing admission to the petitioners, the same could not be cancelled without giving any notice to them as no legal rights could be taken away without opportunity of hearing being given as held by the Supreme Court in *Ex-Capt. K. C. Arora and another v. State of Haryana and others* (1). *Ram Sarup v. State of Haryana and others* (2), was a case where the applicant did not possess the requisite qualification at the time of appointment, however, at the time of passing of the impugned order, he had obtained the requisite qualification/experience, the petitioner, it was alleged, could not be reverted. The ratio of the decision can to some extent be followed in these cases. Further reference may be made to a decision of this Court in *Harinder Kaur Chandok v. The Punjab School Education Board* (3). The candidate was unsuccessful in Matric Examination held in March, 1986. She passed the same examination in September, 1986. She was further allowed to take +1 Examination. It was held that her examination could not be cancelled on the ground that period of one year between the two examinations i.e. Matric Examination held in September, 1986 and the +1

(1) 1984(2) S.L.R. 97.

(2) 1978(2) S.L.R. 836.

(3) A.I.R. 1988 Punjab and Haryana 244.

Trilochan Singh v. Maharshi Dayanand University, Rohtak and another (A. L. Bahri, J.)

Examination held in April 1987 had not elapsed. It was in this case that it was held that there was no utility of Supplementary Examination if the candidate after passing the same could not save one year. In para 5 of the judgment, it was observed as under :

“The net result would be that even if a student has qualified Matriculation in September, 1986 (Supplementary Examination), his passing the Supplementary Examination is of no utility to him as he could have otherwise also appeared in April, 1987 annual examination, after having wasted full one year. This would render the exercise of holding the Supplementary Examination by the Board totally meaningless.”

(14) The aforesaid decision in *Harinder Kaur Chandok's case* was overruled by a Division Bench of this Court in *Anjana Gulati, Minor through Father v. The Punjab School Education Board* (4), on the ground that initially admission could not be sought as the candidate had not spent one academic year previously as provided under Regulation 5 of the Punjab School Education Board Senior Secondary Certificate Examination, Part-I, Regulations, 1986. An extract of the aforesaid regulation reads as under :—

“*Eligibility for Examination :*

A. The Senior Secondary Certificate Examination Part-I shall be open to a person who has passed not less than one academic year previously :

(i) Matriculation or Secondary School Examination of this Board.

(ii) Any other examination recognised by board equivalent to the examinations mentioned at (i) above.....”

The Division Bench held as under :—

“Although the provision contained in Regulation 5, on the reasoning adopted by the learned Judge, appears to cause

some hardship to a candidate who clears the matriculation examination held in September, but on that score it cannot be said to impose an arbitrary condition or struck down as such."

The Supreme Court decision in *Rajendra Prasad Mathur v. Karnataka University and another* (5), was distinguished in *Anjana Gulati's case* (supra) on facts. The Supreme Court in *Rajendra Prasad Mathur's case* held as under:—

"We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would, therefore, notwithstanding the view taken by us in this judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission."

The aforesaid observations were relied upon by the Supreme Court in *A. Sudha v. University of Mysore and another* (6), and it was held as under:—

"The Court was, therefore, of the view that as the students were innocent and were admitted to the Colleges for the sake of capitation fee in some cases, they should not be penalised and should be allowed to continue their studies in the respective Engineering Colleges in which they were granted admission."

In *Miss Poonam Kumari v. The Kurukshetra University and another* (7), wherein the admission to B.Ed. Course was cancelled after Poonam Kumari had completed full Course, a direction was given to the University to declare her result forthwith so that a considerable period of her student career should not be wasted.

(15) Keeping in view the rules and regulations of the University as provided in the Calendar and in the Prospectus as discussed above as well as on equitable grounds based on the ratio of the decisions discussed above, the cases in hand are to be disposed of. In the Prospectus issued for admission to the B.Ed. Correspondence

(5) A.I.R. 1986 S.C. 1448.

(6) A.I.R. 1987 S.C. 2305.

(7) C.W.P. No. 6929 of 1987 decided on 25th July, 1988.

**Saudagar Singh v. Executive Officer, Municipal Committee, Tappa
and others (M. M. Punchhi, J.)**

Course, there was no prohibition for provisional admission of the candidates to B.Ed. Correspondence Course who had taken B.A. Final Examination and their result had not been declared. Furthermore, if such candidates could get admission in the said course there was no reason why candidates who had taken B.A. Final Examination in April and were placed in compartment in one of the subjects could not get admission as students were not required to attend the entire session for B.Ed. Correspondence Course personally and they were to get the lessons by post in instalments on deposit of requisite fees. During this session, such of the students could not be denied the benefit of passing B.A. Final Examination, held in September (Supplementary Examination). By passing B.A. Final Examination in Supplementary Examination, for all intents and purposes, they would be eligible to take B.Ed. Final Examination (One Year Course) in April next.

(16) For the reasons recorded above, all the writ petitions are allowed with no order as to costs directing the respondents to regularise the admission of the petitioners in B.Ed. Correspondence Course and to declare their result as they have taken the final examination which is being held.

P.C.G.

Before : M. M. Punchhi & Ujagar Singh, JJ.

SAUDAGAR SINGH,—*Petitioner.*

versus

EXECUTIVE OFFICER, MUNICIPAL COMMITTEE, TAPPA AND
OTHERS,—*Respondents.*

Civil Revision No. 160 of 1988.

11th July, 1989.

*Civil Procedure Code, 1908 (Act V of 1908)—Order 9, Rule 13—
Setting aside of ex-parte decree—Non-appearance of counsel due to
lawyer's strike—Discretion of Courts—Curtailment in such discre-
tion—Whether amounts to strangulating justice.*