

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

DEVA SINGH,—*Petitioner.**versus*THE KURUKSHETRA UNIVERSITY ETC.,—*Respondents.*

Civil Writ No. 2955 of 1970.

October 15, 1970.

Constitution of India (1950)—Article 29(2)—Kurukshetra University Act—Section 5—Educational institution maintained by the State or receiving aid out of State Funds—Citizen's right of admission into—Extent of—Stated—Function of refusing admission to a student in an educational institution—Whether administrative—Principles of natural justice—Whether applicable—Kurukshetra University Act (XII of 1956)—Sections 15, 16—Ordinance II in Schedule I—Conditions of admission to a University Course laid down by Council of Admissions—Whether intra vires Ordinance II.

Held, that the provisions of article 29(2) of the Constitution do not guarantee admission into every educational institution maintained or aided by the State. The article confers only a negative fundamental right on the citizens. It envisages that though admission into any State educational institution may no doubt be refused on a valid ground, it shall never be refused on the ground only of religion, race, caste, language or any of them. The Article does not confer an absolute right of admission into any institution. Similarly section 5 of the Kurukshetra University Act merely opens the doors of the University to all persons irrespective of sex, nationality, race, creed, caste or class. Nothing stated in section 5 can, however, mean that the University must admit even those students who are likely to indulge in indiscipline and questionable behaviour. In fact no educational institution in the country can at present admit all the candidates who offer themselves for admission. Valid and reasonable restrictions have, therefore, necessarily to be laid down by all the educational institutions to enable them to observe uniform standards of admission to various courses based on educational and other qualifications, age etc. So long as admission is not guaranteed to every student, it goes without saying that in order to maintain discipline in educational institutions, the authorities responsible for admission thereto have even in the absence of a relevant rule or regulation, the inherent right to refuse admission to an eligible candidate if the admitting authorities are satisfied that he is not a desirable person in the sense that he is likely to indulge in undesirable activities and create problems of discipline and law and order for the educational institution. Nothing contained in Article 29 of the Constitution or section 5 of the Act impinges on such an inherent right in any manner. (Para 6).

Held, that whereas the proceedings for inflicting a penalty on a candidate are necessarily quasi-judicial, the function of admitting or refusing to admit a student to an educational institution is merely administrative. Rules of natural justice have no application to a case of that type. This does not, however, mean that admission can be refused to an eligible candidate by a State owned or State aided educational institution on arbitrary, capricious or whimsical grounds. (Para 7).

Held, that the purview as well as the proviso to sub-clause (1) of clause 2 of Ordinance II mentioned in Schedule I of the Act are subject to the opening words of the clause, i.e., "in conformity with the decisions of the above-mentioned Committee for Admissions". The power of the Head of Department to admit a candidate to the course of the Master of Arts in any subject has to be exercised in conformity with the decisions of the Committee for Admissions. Item (a) of sub-clause (2) of clause 1 of the Ordinance enjoins on the Committee for Admissions the duty to determine or approve the principles on which admissions are to be made. The relevant decisions of the Committee to decline admission to a student who had been punished on account of misconduct etc. fall squarely within the authority vested in the Committee under clause 1(2) (a) and (c) of Ordinance II. The said condition of admission laid down by the Committee for Admissions cannot, therefore, be held to be invalid. It is *intra vires* Ordinance II of the University Ordinances. (Para 9).

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order dated 31st August, 1970 passed by respondent No. 2 and further praying that an ad-interim order be issued staying the operation of the impugned order till the decision of this Writ Petition.

R. S. MITTAL AND I. S. BALHARA, ADVOCATES, for the petitioner.

J. L. GUPTA, AND O. P. HOSHIARPURI, ADVOCATES, for the respondents.

JUDGMENT

NARULA, J.—Deva Singh petitioner seeks a direction from this Court under Articles 226 and 227 of the Constitution annulling the communication of respondent No. 2, who is the Head of the Department of Economics in the first respondent University, dated August 31, 1970 (Annexure 'A' to the writ petition) whereby the petitioner was informed that his provisional admission to the M.A. Economics Course could not be made regular and the petitioner could, therefore, apply for the refund of the fees deposited by him. The facts leading to the

fling of this petition which are gathered from the various affidavits filed by the petitioner as well as the respondents may first be noticed.

(2) The petitioner was a B.Sc. (Honours), student in the Kurukshetra University, but could not take that examination in April, 1967, as he ran short of the minimum number of lectures entitling him to appear in the examination. In a situation like this, the relevant regulations of the University permitted him to join, as a casual student, the three terms of the next session, i.e., July to September, October to December, 1967, and January to April, 1968. He joined and completed his courses in the first two terms ending on December 31, 1967. Before he could join January to April, 1968, term (the third term), there was a strike in the University in January, 1968. It is alleged that the petitioner took part in the activities of the strikers which had become violent. The question of taking disciplinary action against the students, who were alleged to have turned violent was taken up, and decided by the Academic Council of the University on January 11, 1968. A copy of the relevant extract from the proceedings of the above-mentioned meeting of the Academic Council has been placed on the record of this case as annexure to the affidavit of respondent No. 2, dated September 28, 1970. Those minutes of the Council's meeting read as follows :—

“The Vice-Chancellor gave the back-ground of the demand of students for the abolition of the Internal Assessment system in the University. The students of the Government College, Kurukshetra, had on the 8th January, 1968, gone on strike without any prior notice. One of their demands was the abolition of the Internal Assessment. The Vice-Chancellor had, through the Principal, Government College, assured the students that the matter was already under consideration of the University and it was likely to be considered in the next meeting of the Academic Council to be held on the 18th January, 1968. The students continued the strike. On the 9th January, 1968, on their appeal, the Supreme Council of the Kurukshetra University Students' Union also gave a call for the entire student-body to go on strike. The student-leaders were invited to a meeting of the Board of Residence, Health and Discipline where they stated that although the abolition of the Internal Assessment was their main demand yet they would continue the strike even if the University decided to abolish it. On

the 10th January, 1968, the students' agitation turned violent. They tried to break open the door of the Common Room in the ARTS Faculty Building, where a lecture by Dr. W. Robert Holmes, Director, United States Educational Foundation, New Delhi, was being held. In view of the violent nature of the students' demonstration, the lecture had to be ended abruptly and the Chief Guest had to be escorted out of the building. In the evening, the Vice-Chancellor called a meeting of the Heads of the Departments and Principals of the Colleges to consider the question of abolition of the Internal Assessment Scheme. This meeting was also informed of the two letters received from the University Co-operative Store and Bookshop in which they had intimated that the students had decided to ransack the Shopping Centre. This meeting advised the Vice-Chancellor to take immediate steps to seek police protection to ensure safety of life and property in the University campus. It was further decided to call an emergent meeting of the Academic Council on the 11th January, and to decide the matter. This fact was notified to the students. But even after that, they took out a procession in the evening, marched towards the residence of the Vice-Chancellor and started breaking window-panes, electric bulbs/tubes and damaging other property. The police who had been alerted consequent upon the advice of the Heads of Departments/Principals, referred to above, was called and the students' mob moved away from the Vice-Chancellor's residence. Some of them went to the Administrative Block, burnt files in the office of the P.A. to V. C. and the A:R: II's office and damaged other University property including a few typewriters. The students continued their violent action almost allthrough the night despite the police having been posted at the Shopping Centre and the shops could be saved only because of the presence of the police there. The Vice-Chancellor further reported that the following students have had to be expelled for grave misconduct, damaging University property, indulging in indiscipline and inciting other students to acts of violence :—

- (1) Shri Narinder Paul Singh, B.Sc. (Hons.) Chemistry III year.

Deva Singh v. The Kurukshetra University etc. (Narula, J.)

- (2) Shri Sita Ram Vohra, B.Sc. (Pass) III Year.
- (3) Shri Vinod Saini, B.Sc. (Hons.) Chemistry III Year.
- (4) Shri Prem Sarup Bhardwaj, B.Sc. (Hons.) Physics III Year.
- (5) Shri Deva Singh, B.Sc. (Hons.) Physics III Year.
- (6) Shri Mohinder Singh Dahiya, M.A. (Previous) Political Science."

Deva Singh petitioner (whose name occurs at serial No. 5 above) was one of the students, who were directed to be expelled on the finding of their having been guilty of grave misconduct and acts of indiscipline, etc. *The order of expulsion for three years was communicated to the petitioner on January 12, 1968.* He then approached Mr. Verma, the then Vice-Chancellor of the University. He claims to have explained to the Vice-Chancellor that he had not taken part in the strike as he was not even a student of the University in the beginning of January, 1968. The Vice-Chancellor is alleged to have asked the petitioner to prove his *bona fides*, and it is claimed that through the petitioner's efforts and the good offices of Shri G. L. Nanda, Member of Parliament, the petitioner was able to secure a settlement between the leaders of the striking students and the University authorities, as a result of which the strike was called off. We are really not concerned with whether these allegations are correct or not. The fact remains that though no order exonerating the petitioner of the alleged acts of misconduct and indiscipline was passed in his favour, *the order of the punishment imposed on him was set aside inasmuch as the Vice-Chancellor by his order, dated January 31, 1968, withdrew the order of expulsion.* Thereupon, the petitioner was admitted to the third term of B.Sc. (Honours) Course on February 5, 1968, and the petitioner passed the said examination in April, 1969, in the third division. In accordance with the regulations of the University permitting such a course, the petitioner improved his division in B.Sc. (Honours) with Mathematics in the examination held in April, 1970, when he was placed in the second division, according to the result which was declared on July 16, 1970. Though the time for admission to the M.A. classes in the ordinary course expired on July 31, 1970, the students could still be admitted by the Head of the Department on payment of late fee up to August, 15, 1970.

(3) Though the parties have raked up some controversy in their pleadings about the petitioner having or not having made attempts to secure admission in some other University, and about his having failed to succeed in such efforts on account of the time for admission

in those Universities having expired, those matters do not appear to be relevant for deciding the points in controversy in the present petition. The fact remains that on August 13, 1970, the petitioner submitted his application form in duplicate for admission to the M.A. in Economics Course of the respondent-University. Once again, it is not in dispute that the petitioner possessed all the requisite academic qualifications for admission to the M.A. course in Economics. On August 14, 1970, the Head of the Department provisionally admitted the petitioner though he states that he was reluctant to allow him admission at that stage. The circumstances in which he made the order of provisional admission of the petitioner have been explained in paragraph 3 of the affidavit of the Head of the Department, dated September 28, 1970, in the following words :—

“When the petitioner appeared before the deponent for admission to the M.A. Economics course on the 14th of August, 1970, the deponent told the petitioner that he had an impression that there was something against the petitioner’s antecedents while he was a student of B.Sc. (Hons.) Physics in this University, and the deponent was, therefore, rather reluctant to admit him unless he had got the position confirmed. The petitioner pleaded that, in keeping with the practice in such and similar cases in this University, he might be admitted provisionally, pending investigation and finalisation of his case, especially as the 14th August was the last working day until which the petitioner could have been admitted under the orders of the deponent. The deponent, then agreed to the petitioner’s request and admitted him provisionally. The deponent recorded his orders ‘Admit provisionally,’ on the petitioner’s admission form, in duplicate, retained one copy for his office, and handed the other copy (meant for the Fee section) over to the petitioner to enable him to deposit his fees. It is absolutely wrong for the petitioner to suggest that the deponent had not recorded his orders ‘admit provisionally’ on the petitioner’s admission form before it was handed over to him for depositing his fees.”

The second respondent thereafter spoke to the Registrar of the University on the same day and wrote to the Registrar on August 17, 1970, as below :—

“You would kindly recall my conversation with you on the 14th August, regarding the admission of Shri Deva Singh to

the M.A. Economics course. I have admitted him provisionally. Perhaps you will kindly ascertain from your office or the Proctor whether there is nothing against the boy for the purposes of his admission. The Proctor's communication, dated July, 8, 1970, does not contain his name. Perhaps you will also kindly bring the matter to the notice of the Vice-Chancellor. I am enclosing Deva Singh's application for admission."

The Vice-Chancellor called for a report about the petitioner's case from the Proctor. The new Proctor (Mr. J. L. Gupta has stated that the old Proctor had, in the meantime, been succeeded by the new one) looked up the relevant record and submitted the following report:—

"Looking up the Proctor's file, I find that Mr. Deva Singh, a student of B.Sc. (Hons.) Physics III in 1968, was expelled by the then Vice-Chancellor, Mr. D. C. Verma, on the recommendation of the Board of Residence, Health and Discipline. The charges against him were 'grave misconduct, damaging University property, indulging in indiscipline, and inciting other students to acts of violence'. The order of expulsion was issued by the Registrar on January 11, 1968. The Vice-Chancellor withdrew the order of expulsion against Mr. Deva Singh, on January 31, 1968. No reason was given for the reversal of the earlier order."

When it was found from the abovementioned investigation that the petitioner had been held at one time to be guilty of grave misconduct, of damaging University property, and of having indulged in indiscipline and inciting other students to acts of violence, the matter was reported to the Academic Council which is the final authority in respect of discipline under *section 12 of the Kurukshetra University Act* (hereinafter called the Act). It was in the abovementioned circumstances that the Academic Council passed the impugned order on August 29, 1970, in the following words:—

"Shri Deva Singh, took an active part when during the strike of 1968, the residence of the Vice-Chancellor was attacked and some records from the Registrar's office were set fire to. He was expelled. Although, the expulsion order was withdrawn by the Vice-Chancellor, obviously under pressure, Shri Deva Singh was not exonerated. He cannot be admitted. His provisional admission is cancelled."

It was in compliance with the abovequoted order that respondent No. 2 issued letter Annexure 'A' to the petitioner. This writ petition was then filed on September 15, 1970. After perusing the original written statement of the University (the affidavit of its Registrar), the petition was admitted on September 16, 1970, but in view of the order directing its immediate hearing, no interim relief was granted to the petitioner.

(4) In the Registrar's affidavit, dated September 15, 1970, filed in reply to the advance notice of motion served by the petitioner, it was stated, *inter alia*, that the Admission Committee, constituted under ordinance II, of the Kurukshetra University framed under sections 15 and 16 of the Act, had while providing for procedure for admission of students to the various courses of the University laid down the following conditions:—

"In the case of students, who have been punished on account of misconduct, their cases for admission will be referred to a Committee consisting of the Vice-Chancellor, Head of the Department/Principal and the Chief Warden, which will decide each case on its merit."

In petitioner's replication, it was averred that under clause 2 of Ordinance II, the Head of the Department is the final authority in the case of admission to the M.A. Courses, and inasmuch as the said clause had not been amended or repealed according to the procedure prescribed under section 16(2) of the Act, and in the absence of any such amendment or repeal, the said Ordinance is binding and any decisions of the Admission Committee contrary to the Ordinance is *non est* in the eye of law. Objection was taken at that stage, that no affidavit had been filed by respondent No. 2. That objection has, however, been subsequently rendered irrelevant in view of the affidavit of the second respondent, dated September 28, 1970, having actually been filed. In reply to the replication, the Assistant Registrar of the University swore a further affidavit, dated September 22, 1970, in the course of which it was stated that the words "admit provisionally" had been written by the Head of the Department in his own handwriting on both the copies of the admission form and that if the petitioner had not been able to pay the fee for the third term on account of the strike, still he had not ceased to be a student of the University, and, therefore, action had been taken against him on account of his having taken active part in the strike. It was further

emphasised that no student had any legal right to admission and no legal right of the petitioner had been infringed by admission having been refused to him in the present case. It was also made clear that no action by way of disciplinary proceedings had been taken against the petitioner while refusing to regularise his admission. It was after a further affidavit of the petitioner, dated September 25, 1970, had been filed that the second respondent filed his return, dated September 28, 1970.

(5) Mr. R. S. Mittal, who has fully and ably argued this case has contended :—

- (1) Clause (2) of Article 29 of the Constitution has conferred a fundamental right and section 5 of the Act has conferred a statutory right on the petitioner to get admitted to the M.A. Course in Economics of the respondent University and the refusal of the University authorities to regularise petitioner's admission into the said course has violated his said fundamental and statutory right ;
- (2) Before deciding not to regularise the provisional admission of the petitioner, the Admission Committee of the University was bound to give the petitioner an opportunity to prove that the allegations on account of which his regular admission was sought to be refused to him were factually wrong ;
- (3) The condition laid down by the Admission Committee (reproduced in paragraph 5-A of the Registrar's affidavit, and also quoted in an earlier part of this judgment) to the effect that the cases for admission of students, who had been punished on account of misconduct were to be referred to a Committee consisting of the Vice-Chancellor, Head of the Department/Principal and the Chief Warden for decision of the question of admission on its merits, is *ultra vires* clause 2 of Ordinance II of the Ordinances of the University, inasmuch as it impinges on the finality of the authority of the Head of the Department to admit a student to the M.A. Course; and
- (4) Even if the abovementioned condition and procedure for admission laid down by the Admission Committee of the

University be assumed to be valid, the petitioner's case could not be referred to the said Committee as the petitioner could not come within the mischief of that condition inasmuch as the petitioner had never been "punished" on account of misconduct, as the punishment of expulsion inflicted on him earlier had subsequently been withdrawn by the Vice-Chancellor, who was the final authority in the matter.

(6) Clause (2) of Article 29 of the Constitution is in the following terms:—

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

Section 5 of the Act which is a mere projection of the principles laid down in clause (2) of Article 29 of the Constitution reads as follows :—

"The University shall be open to all persons irrespective of sex, nationality, race, creed, caste or class, and no test or condition shall be imposed as to religious belief or profession in admitting or appointing members, students, teachers, workers or in any other connection, whatsoever, and no benefaction shall be accepted which, in the opinion of the authorities of the University, involves conditions or obligations opposed to the spirit and object of this provision."

Inasmuch as admission has not been denied to the petitioner either on the ground of religion, race, caste or language, it cannot possibly be argued that clause (2) of Article 29 has in any manner been infringed. It is erroneous for the petitioner to read into the constitutional provision the guarantee of admission into every educational institution maintained or aided by the State. The Article confers only a negative fundamental right on the citizens. It envisages that though admission into any State educational institution may no doubt be refused on a valid ground, it shall never be refused on the ground only of religion, race, caste, language or any of them. The Article does not confer an absolute right of admission into any institution. Similarly section 5 of the Act merely opens the doors of the University to all persons irrespective of sex, nationality, race, creed, caste or class. Nothing stated in section 5 can, however,

mean that the University must admit even those students who are likely to indulge in indiscipline and questionable behaviour. In fact no educational institution in the country can at present admit all the candidates, who offer themselves for admission. Valid and reasonable restrictions have, therefore, necessarily to be laid down by all the educational institutions to enable them to observe uniform standards of admission to various courses based on educational and other qualifications, age etc. So long as admission is not guaranteed to every student, it goes without saying that in order to maintain discipline in educational institutions, the authorities responsible for admission thereto have even in the absence of a relevant rule or regulation, the inherent right to refuse admission to an eligible candidate if the admitting authorities are satisfied that he is not a desirable person in the sense that he is likely to indulge in undesirable activities and create problems of discipline and law and order for the educational institution. Nothing contained in Article 29 of the Constitution or section 5 of the Act impinges on such an inherent right in any manner. I am, therefore, unable to find any force in the first contention of Mr. Mittal.

(7) In support of his second submission, learned counsel for the petitioner placed reliance on the recent judgment of their Lordships of the Supreme Court in the *Board of High School and Intermediate Education, U.P. and others v. Kumari Chittra Srivastava and others* (1). That was not a case of refusal to admit a candidate to an educational institution, but was the case of imposition of a penalty by cancelling the examination of a candidate who had been allowed to appear at the examination and had actually answered all the question-papers on the ground that he had been admitted to the examination in spite of shortage in attendance at lectures without giving any show-cause notice to the candidate. In those circumstances, it was held that the penalty imposed on the candidate by the Board of High School and Intermediate Education was vitiated on account of violation of rules of natural justice. It was held that in cancelling the examination, the Board was exercising quasi-judicial functions and it was incumbent upon it to issue a show-cause notice to the candidate before inflicting the penalty of cancellation of her examination. In that connection it was further held that whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to

(1) A.I.R. 1970 S.C. 1039.

be penalised has no defence, but on the nature of the order proposed to be passed. Their Lordships held that principles of natural justice are to some minds burdensome, but this price, a small price indeed—has to be paid if we desire a society governed by the rule of law. The Supreme Court declined to pronounce on the legality or appropriateness of the order of the Board of High School and Intermediate Education in the appeal which arose against the writ issued by the High Court. The law laid down by the Supreme Court in the case of *Kumari Chittra Srivastava and others* (1). (supra) cannot avail the petitioner for various reasons. Whereas the proceedings for inflicting a penalty on a candidate are necessarily quasi-judicial, the function of admitting or refusing to admit a student to an educational institution is merely administrative. Rules of natural justice have no application to a case of that type. This does not, however, mean that admission can be refused to an eligible candidate by a State owned or State aided educational institution on arbitrary, capricious or whimsical grounds. Secondly, it is significant that their Lordships of the Supreme Court took specific precaution to point out that they should not be taken to have decided that the rule enunciated by them would also apply when a candidate is refused admission to an examination. General rules for refusing admission to a course or an examination are practically the same. Thirdly, it cannot be said that any rules of natural justice were in fact violated in this case. It is the admitted case of the petitioner that he had been held guilty of misconduct on January 11, 1968, and had been punished for the same and the order had been communicated to him on the next day. Irrespective of whether the condition for admission laid down by the Committee of the University applied to the petitioner or not, it was open to the respondent University to refuse admission to the petitioner despite his punishment having been recalled if the high-powered Committee appointed by the University was apprehensive of any danger to the maintenance of peace, tranquillity and order in the University at the hands of the petitioner. It is significant that the high-powered Committee which came to a decision against the petitioner was headed by Dr. S. K. Dutta, retired Chief Justice of the High Court of Assam and Nagaland, the present Vice-Chancellor of the respondent University, who is well versed with principles of natural justice.

(8) Nor is the Full Bench judgment of the Allahabad High Court in *Gajadhar Prasad Misra v. The Vice-Chancellor of the University of Allahabad and others* (2) of any avail to the petitioner. Mr. Mittal

(2) A.I.R. 1966 All. 477.

placed great reliance on the observations of their Lordships of the Allahabad High Court in the abovementioned case to the effect that no one should be arbitrarily deprived of the right to study in the University and to the effect that it is settled law that the right to receive education is a basic right in a democracy. On the facts and in the circumstances of this case to which detailed reference has already been made, it appears to me impossible to even suggest that the petitioner has been refused admission in the respondent University "arbitrarily." The observations of the Allahabad High Court to the effect that objective determination of certain facts cannot be avoided has reference to the question of deciding whether or not to punish a student and not to the question of admission. For the foregoing reasons, I have no hesitation in repelling even the second contention of Mr. Mittal.

(9) In order to appreciate the third ground on which the impugned order is attacked, it is necessary to notice a few provisions of the Act and the Ordinances, etc., framed under it. Section 15(a) of the Act provides for framing of Ordinances, subject to the provisions of the Act, in the matter of "the admission of students to the University and their enrolment as such." Section 16(1) states that on the commencement of the Act the Ordinances of the University shall be those as set out in Schedule I to the Act. Sub-section (2) of section 16 authorises the Executive Council of the University to amend, repeal or add to any of the Ordinances, but, *inter alia*, provides that no Ordinance shall be made affecting the admission or enrolment of students unless the draft of such an Ordinance has been proposed by the Academic Council. Ordinance II in Schedule I [referred to in sub-section (1) of section 16] is headed "Procedure for Admission." Clause 1 of that Ordinance states as follows:—

"(1) Admission of students to the University shall be regulated by a Committee of the 'Shiksha-Samiti' (Academic Council), appointed for the purpose, consisting of the following :—

- (a) The Principals of Colleges,
- (b) The Deans of Faculties,
- (c) Two members appointed by the 'Shiksha-Samiti' (Academic Council) for a term of two years, and
- (d) The Registrar.

- (2) The said Committee shall :
- (a) determine or approve the principles on which admissions are to be made ;
 - (b) ascertain the number of places to be available in the Departments and in the Colleges; and
 - (c) decide, as soon as may be possible, before the commencement of admissions, the manner in which the number of students, to be admitted to colleges and to different courses, may be regulated."

Relevant part of clause 2 of the said Ordinance states as under:—

- "(1) In conformity with the decisions of the abovementioned Committee for Admissions, and save as hereinafter provided, the Principal of a College shall register students for admissions and admit those students, who possess the qualifications for admission prescribed by the Act, the Statutes or the Ordinances :

Provided that students seeking admission to the courses for the Bachelor of Arts/Science (Honours), and the Master of Arts/Science/Education shall be registered for admission and be admitted to the University by the Head of the Department concerned, _____."

The argument of Mr. Mittal is that the proviso to sub-clause (1) of clause 2 of Ordinance II confers the power of admission to the Course of Master of Arts on the Head of the Department concerned and any rule or regulation divesting the authority of the Head of the Department or diluting the same would be *ultra vires* the said proviso. This argument of Mr. Mittal is also misconceived. The purview as well as the provisos to sub-clause (1) of clause 2 of Ordinance II are subject to the opening words of the clause, i.e., "in conformity with the decisions of the abovementioned Committee for Admissions." The power of the Head of Department to admit a candidate to the Course of the Master of Arts in Economics or any other subject has to be exercised in conformity with the decisions of the Committee for Admissions. Item (a) of sub-clause (2) of clause 1 of the Ordinance enjoins on the Committee for Admissions the duty to determine or approve the principles on which admissions are to be made. The relevant decisions of the Committee to decline admission to a student who had been punished on account of misconduct, etc., fall squarely within the authority vested in the Committee under clause 1(2) (a)

and (c) of Ordinance II. The said condition of admission laid down by the Committee for Admissions cannot, therefore, be held to be invalid. It is *intra vires* Ordinance II of the University Ordinances. Even otherwise it is the Head of the Department, who had refused to give final admission to the petitioner on the last day of the extended period of admission, and had given him merely provisional admission in the circumstances detailed in paragraph 3 of the second respondent's affidavit, dated September 28, 1970, and it was the Head of Department himself, who had sent the impugned communication under his own signature to the petitioner declining to regularise the admission of the petitioner though he was no doubt guided in that decision by the deliberations of the Committee which cannot be possibly called, in the circumstances of this case, an extraneous consideration. It was the Head of Department, who hesitated in admitting the petitioner. It was he himself, who immediately contacted the Registrar on telephone and followed up the telephonic communication with the written letter of the 17th of August, 1970. It was he, who got the matter laid before the Vice-Chancellor and took steps to obtain a report from the Proctor's file. He was himself a member of the Committee which came to the impugned decision and he himself gave the final order to the petitioner to take back his fees. In these circumstances, it can neither be said that the Committee has no jurisdiction to control admissions which have to be made by the Head of Department, nor can it be said that the final decision was given by anyone other than the Head of the Department himself.

(10) This takes me to the fourth contention of the learned counsel. The argument of Mr. Mittal to the effect that the Committee for Admissions could deal with the case of only such a student as had been punished on account of misconduct, and the case of the petitioner could not be dealt with by the Committee as his punishment had been withdrawn by the Vice-Chancellor, no doubt looks very attractive at first sight. The relevant decision cannot, however, be construed like a statutory provision. The intention behind the provision and the object and spirit thereof have to be looked to. Broadly speaking, the object of the provision is that a high-powered Committee of the University (headed by no less a person than the Vice-Chancellor himself in which the Head of the Department was a member and the Chief Warden himself also took part) must ensure that a student, who had been previously guilty of misconduct should not again find admission to the University without the matter being thoroughly looked into. "Punishment"

normally no doubt means suffering for some offence, but even if that part of the punishment which consists of the sentence is remitted, the student concerned must still be held to have been punished on account of misconduct if he has not been exonerated of the relevant misconduct, and if his conviction on that ground stands despite the sentence having been removed. This is the only practical way of interpreting the relevant decision of the University authorities. Moreover, as already stated, it would, in my opinion, make no difference whether the case of the petitioner did or did not squarely fall within the phraseology of the decision as an educational institution has the inherent right to refuse admission to a candidate, who is considered by the University authorities to be undesirable.

(11) Mr. Jawahar Lal Gupta, contended that even within the strict phraseology of the relevant decision, the petitioner was a person who had been punished as the clause does not state that only those students, who had been punished and whose punishment had subsequently been maintained would depend for their admission on the decision of the Committee. According to Mr. Gupta, even if the petitioner had been subsequently exonerated of the allegation of misconduct, he would still have been a person "who had been punished on account of misconduct" at one time. This submission of Mr. Gupta appears to me to be too far-fetched.

(12) Mr. Gupta, then contended that no statutory duty was cast on the University to admit the petitioner and no writ in the nature of mandamus can issue to the University unless the law enjoins such a duty on it. For that proposition he has relied on the observations of their Lordships of the Supreme Court in *Lekhraj Sathramdas Lalvani v. N. M. Shah, Deputy Custodian-cum-Managing Officer, Bombay and others* (3), to the effect that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned, and there is a failure on the part of that officer to discharge that statutory obligation. This argument of the learned counsel for the respondents is only of academic value as Article 226 of the Constitution authorises this Court to issue any other order or direction in addition to adopting the forms of well-known writs issued in England and in the United States of America. Mr. Gupta is, however, correct that the statutory duty of the University to admit students is confined to desist from refusing admission on any ground prohibited in clause (2) of Article 29 of the

(3) A.I.R. 1966 S.C. 334.

Deva Singh v. The Kurukshetra University etc. (Narula, J.)

Constitution or section 5 of the Act, and from refusing to admit a candidate on any arbitrary, capricious or extraneous consideration. Inasmuch as the petitioner has been refused admission on a ground which cannot by any stretch of imagination be called extraneous or arbitrary, it is not for this Court to interfere in the internal affairs of the University.

(13) Mr. Jawahar Lal Gupta, also referred to the Division Bench judgment of the Allahabad High Court in *Ramesh Chandra Chaube v. Principal Bipin Behari Intermediate College, Jhansi* (4), and on the basis of that judgment argued that there is no guarantee in the Constitution that if a student is studying in any institution then he has a right to continue his education in that particular institution even though he may not be acceptable to the authorities of the institution. The Allahabad High Court went to the length of holding that the Principal of a College can without communicating the reasons inform a student studying in the College that he cannot be admitted to the College during the next session where the Principal comes to the conclusion that such an action is necessary in the interest of discipline among students. It was held that such an action of the Principal is not hit by Article 29(2) and the High Court will not interfere under Article 226 with the action taken by the Head of an educational institution. Whatever may or may not be said about informing a student in advance about the decision to refuse him admission in the next course, it appears to me to be elementary that the Head of an institution can always refuse admission to a student to a new course where such authority comes to the conclusion that such action is necessary in the interest of discipline among the students. In any event grant of relief under Article 226 of the Constitution being discretionary, it would in my opinion be permitting the abuse of the provisions of the Constitution if students excluded from admission by educational institutions on the grounds of the type referred to above are thrust on those institutions by High Courts in the purported exercise of their extraordinary jurisdiction under Article 226.

(14) No other point having been argued in this case, the writ petition fails and is dismissed with costs.

(4) A.I.R. 1953 All 90.

B. S. G.