
IN THE HON'BLE
SUPREME COURT OF INDE

Civil Appeal No. 666 of 2007

SmaFel

....Appellant

versus

Brotherhood University, TAN

.... Respondent

MEMORIAL FOR THE APPELLANT

(Counsels for Appellant)

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CASES CITED

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5. Manager, St. Thomas U.P. School, Kerala v. Commr. And Secy. To General Dept. AIR 2002 SC 756
6. Singh v. ministry of employment and immigration 1985 SC of Canada
7. St. Xavier's college v. state of Gujarat AIR 1974 SC 1389
8. Suneel Jatley v. State of Haryana Air 1984 SC 1534

BOOKS REFERRED

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STATEMENT OF JURISDICTION

The appellant has approached the Hon'ble Supreme Court of Inde under Article 132 of the Constitution of Inde, challenging the legality of the order passed by the Hon'ble High Court.

Article 132: . Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.— (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of Inde, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

It is most humbly submitted that this Hon'ble Court has the jurisdiction to examine the legality of the impugned order

The appellant submits to the jurisdiction of this Court.

STATEMENT OF FACTS

1. An overseas body belonging to Hardee community, which is a minority community in Inde establishes EXCEL INSTITUTE OF TECHNOLOGY & PROFFESIONAL STUDIES with highly qualified and internationally reputed faculty in the state of Shalimar, where it is a majority community.
2. The institution's syllabus is based on a reputed foreign university, Oxbridge. Many faculties of the institute also teach at Excel and the students from Excel are easily admitted in Oxbridge for post graduation courses. Excel establishes a branch institution at TAN state where Hardee is a linguistic and religious minority. Excel did not request for aid or recognition from TAN.
3. TAN has a reputed Brotherhood University of Technology which recognizes the professional courses based on guidelines issued by it and admits students for post graduation only from recognised institutions and also from foreign universities whose pattern of education is recognised by it. And it has also entered into MOU's with many foreign universities for Student Exchange Program (SEP). It awards joint Postgraduate degrees for SEP. Students must at the time of joining, opt for this mode and indicate in the application form.
4. One student SmaFel from Shalimar belonging to Hardee applied for a degree course in Shalimar but could not gain admission due to his average grades. He also applied for same course in Excel where he got admission due to his minority status.
5. After finishing his graduation in 2006 he applied for Oxbridge and got admission in post graduation course. He opted for SEP with TAN's Brotherhood University.
6. SmaFel completed his post graduation course at Brotherhood University under SEP in 2007.
7. He applied for PhD course at Brotherhood University under the NATIONAL RESERVATION POLICY for minority community and got the admission.
8. The reservation policy stated that if suitable candidate is not eligible or has applied the seat may be allotted to the next eligible candidate in the waiting list.
9. Another student UnLuFel who had better grades than Smafel could not get admission as he belonged to a forward community. And his chances of getting admission were very remote as the state prohibits admission tests.
10. He found out that SmaFel did his graduation from Excel, which is not recognised by Brotherhood University, and they do not admit students from Excel, he filed writ u/art 226 of the Constitution of Inde (similar to Constitution of India) in High Court of TAN to set aside SmaFel's admission stating the above mentioned reason. Subsequently his completion of Post graduation course in Brotherhood University is also improper as it is based on his bachelor's degree. Based on this he is ineligible for admission in PhD course in Brotherhood University.
11. The TAN High Court set aside the admission of SmaFel and directed Brotherhood University to admit UnLuFel.

LEGAL ISSUES

Whether the impugned order passed by the Hon'ble High Court is violative of A/14 of the Constitution of Inde or not.

Whether appellant's graduation from Excel institute of technology & professional studies is valid or not.

Whether appellant's joint degree of post graduation from Brotherhood University under SEP is valid or not. If yes, then the *doctrine of estoppel* is applicable.

Whether appellant is eligible for Brotherhood's PhD. course.

SUMMARY OF ARGUMENTS

Whether the impugned order passed by the Hon’ble High Court is violative of A/14 of the Constitution of Inde.

Article 14.*Equality before law- the state shall not deny to any person the equality before the law or the equal protection of the laws within the territory of Inde.*

Appellant though being an eligible candidate, his admission was set aside replacing with the *next* eligible candidate.

It is violative of Article 14 as the appellant’s admission was set aside only on the unreasonable basis that the institution from where he did his graduation is not recognised by Brotherhood University.

The appellant took admission in the PhD course of Brotherhood University under National Reservation Policy.

Whether appellant’s graduation from Excel institute of technology & professional studies is valid or not.

Article 29:- Protection of interest of minority.

As per Article 29(1) of Constitution of Inde, “*any section of the citizens residing in the territory of inde or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.*”

Article 30:- Right of minorities to establish and administer educational institutions.

Article 30(1):- *All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.*

Appellant’s joint degree from Brotherhood University is valid or not, and the applicability of the doctrine of estoppel.

Excel followed the syllabus of Oxbridge and even the faculty of Oxbridge taught at Excel. Oxbridge gave admissions to students from Excel, therefore his admission at Oxbridge is justified.

On the other hand Brotherhood University recognizes Oxbridge and takes its students under SEP for postgraduate courses, Smafel now being a student of Oxbridge of the PG course was in full condition to be a part of SEP.

Hence his joint degree provided by Brotherhood University is valid.

Appellant is eligible for Brotherhood's PhD course

To do PhD from Brotherhood, a student must have his post graduation degree as stated.

Smafel had the joint degree which he got from Brotherhood. Therefore he fell under the eligible candidate condition.

Being a minority he applied for admission under the reservation quota which was fixed by the University, after finding him stand good on the eligibility criteria he was given admission in the PhD course of Brotherhood University.

ARGUMENTS ADVANCED

The impugned order passed by the hon'ble high court is sviolative of Article 14 of the constitution of Inde

The order passed by the hon'ble High Court is violative of Article 14 of the constitution of Inde as the impugned order violates the principle of **natural justice**¹ i.e. *audi alterem partem*.

It is submitted that in the present case, despite representations made by the appellant, he has not been given fair hearing as his defense has not been considered by the hon'ble High court, which set aside the admission of appellant to the PhD. course of Brotherhood University on the unreasonable basis that the college from where the appellant did his graduation i.e. EXCEL is not recognised by the Brotherhood University which provides for the PhD. Course.²

Brotherhood University's eligibility criteria for admission in postgraduate course is highly unreasonable as they give preference to a selected block of universities without due reasons to their criteria. Only if there should have been any criteria it should have been based on minimum qualification.

In **Singh v. Ministry of Employment and Immigration** the ambit of natural justice was extended to include fundamental justice which in turn enhanced the scope of right to life, liberty and security of person. As the right to life, liberty are an essential ingredients of Article 21 of the constitution of Inde which also includes right to education (in art. 21 A) the same can be applied to the present case.

As per the guidelines issued by Brotherhood University, they only admit student from institutes which are recognised by the university itself. Which is highly unjustified as admitting students only from institutes recognised by Brotherhood University encourages a preferential treatment and a biased attitude towards candidates who deserve but are unrecognised by Brotherhood University.

As pointed out by the apex court in the case of **Suneel Jatley v. State of Haryana**³ that reservation of seats in medical college for students passing out of class viii from rural schools was held bad as students studying in urban areas have equal rights to the students studying in rural area.

¹ **Duke v. queen** 1972

² **Singh v. ministry of employment and immigration** 1985 SC of Canada

³ Air 1984 sc 1534

Appellant's graduation from Excel institute of technology & professional studies is valid or not.

Article 29:- Protection of interest of minority.

Article 29(1) of Constitution of India, “*any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.*”

As per Article 29(1), “*minority community can effectively conserve its language, only through educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant of the right.*”⁴ *The right is however, subject to limitations in clause (2) if such institution receives state aid.*”

Excel being established by Hardee community which is a minority in India was guaranteed the right to conserve its language and script through educational institution. As per the facts stated Excel did not ask for any aid from TAN, therefore, no limitations by the state could be imposed on Excel.

Article 30:- Right of minorities to establish and administer educational institutions.

Article 30(1):- All minorities, whether based on religion or language, shall have the right to establish and administer educational institution of their choice.

Excel, being a minority institution belonging to the Hardee community which is a religious and linguistic minority has been guaranteed by the Constitution the right to establish and administer educational institution of their choice. Hence no objections regarding the establishment of Excel in TAN can be raised.

In the present case, Excel was established in India by Hardee community which is a religious and linguistic minority community in India had the right to establish and administer educational institutions of their choice for the purpose of conserving their community.

The words ‘administer’ and ‘establish’ in Article 30(1) have to be read conjunctively therefore, a minority can claim a right to administer an educational institution only if it has been established by it but not otherwise.

Excel, being established by Hardee community, is administered by the same and hence fulfilling of requirements to claim their rights of a minority institution under Article 30(1).

⁴ **Kerala Education Bill**, *in re*, AIR 1958 SC 956

Manager, St. Thomas U.P. School, Kerala v. Commr. And Secy. To General Dept.⁵

Article 30(1) postulates that the religious community will have the right to establish and administer educational institution of their choice. Meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. The right to administer has been given to the minority, so that it can mould the institution as it thinks fit, and in accordance with its ideas of how the interest of the community in general, and the institution in particular, will be best served. For purposes of Article 30(1), even a single philanthropic individual from the concerned minority can found the institution with his own means.

The apex court has observed in **Azeez Basha**⁶ “Article 30(1) postulates that the religious community will have the right to establish and administer educational institution of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that... The Article in our opinion, clearly shows that the minority will have the right to administer educational institution of their choice provided they have established them, but not otherwise.”

“Article 30 cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or the other, it might have been administering it before the Constitution came into force.”⁷

In **S.P. Mittal v. Union of India**⁸ the Supreme Court has stated:-

“In order to claim the benefit of Article 30(1), the community must show:-

1. That it is a religious\ linguistic minority.
2. That the institution was established by it.

As per the ruling, Excel can claim the benefit of Article 30(1) as the minority community which established Excel is a religious and linguistic minority and has been established by the same.

Scope for state regulation by way of recognition or aid:-

The rights conferred by Article 30(1) upon a minority community are not absolute but is subject to reasonable regulations. It is also evident that neither Article 30(1) nor any other provision in the Constitution confers any right upon the minorities to obtain recognition or aid from the state.⁹

In **St. Xavier's college v. state of Gujarat**¹⁰: it was stated that “the object of Article 30(1) is not to have a kind of a privileged or pampered section of the population but to give minority a sense of security and a feeling of confidence.” The real effect was to ensure preservation of minority institutions and guarantee to minority autonomy in the matter of administration of those institutions.

⁵ AIR 2002 SC 756

⁶ AIR 1968 SC 662 (672)

⁷ **Frank Authority P.S.E. Association v. Union of India**, AIR 1987 SC 311

⁸ AIR 1983 SC 1

⁹ **Kerala Education Bill, in re**, AIR 1958 SC 956

¹⁰ AIR 1974 SC 1389

Excel being a minority institution followed all guidelines prescribed by the constitution and the rulings of the Apex Court, therefore, they can claim their rights of being a minority institution. The appellant being a part of the minority community made use of the minority institution and did his graduation from the same institute. Therefore his graduation as well as the institution must be regarded as a valid and justified one.

Appellant's joint degree for post graduation from Brotherhood University under SEP is valid. Applicability of the *doctrine of estoppel*.

As stated that the syllabus of Excel Institute of Technology & Professional Studies is based on the foreign university Oxbridge. Many faculties of Oxbridge University also teach in Excel and the students who qualify from Excel are easily admitted into Oxbridge for post graduate courses.

Brotherhood University has entered into MOUs with many foreign universities for student exchange program (SEP). The SEP involves exchange of students from these universities for part of their courses to be completed in the other university, which award joint Postgraduate degrees for their courses. To be qualified for SEP, a student must at the time of joining, opt for this mode and indicate in the application itself. This was done to avoid students to enter SEP midway during their courses, as it also involves knowledge of the language of the country, which they chose for PG course. The applicant may indicate their preference of the place (university) for the first/second module which is allocated according to availability and demand.

The appellant in our case after completing his graduation in 2006 and took admission in Oxbridge for his post graduation. As stated above the Oxbridge University easily took admission of students from Excel. He also got registered under SEP from Brotherhood University and in year 2007 was awarded the degree for the same. This fact justifies that the appellant followed all the guidelines issued by the concerned university. And the university awarded the joint degree which makes it clear that they had *no objections* in taking him as a student of their own university under the student exchange program.

The appellant completed his PG course at Brotherhood University under SEP in 2007. His aim was to gain admission to its PhD. course, which admits students only with PG degrees. So he applied for PhD. at Brotherhood University which is considered very renowned. It is much sought for by students throughout the world. A certain percentage of the PhD. course, which has a fixed sanctioned intake, is reserved for the minority communities under National Reservation Policy. Brotherhood's PhD. regulations clause (i) reads "if suitable candidate under National Reservation Policy is not eligible or has applied the seat may be allotted to the next eligible candidate in the waiting list." The appellant who belonged to Hardee community which is a minority community in India, acclaimed the National Reservation policy, being an eligible candidate for the same. The appellant got admission, which clarifies that Brotherhood University

considered him as an eligible candidate for the course as they would have not given him admission in the renowned course which is so much sought by students all over the world if he was not found of the standard requirement of the course.

“The *doctrine of estoppel* is applicable in the present case as it states that there are three crucial requirements for the applicability of this principle which are illustrated below:-

- a. There must be a declaration, act or omission on the part of a person.
- b. By the said declaration, act or omission that person must have intentionally caused or permitted another person to believe a thing to be true.
- c. He must have intentionally caused or permitted the said another person to act upon such belief.”¹¹

In the present case the above stated principles hold good, as there was a declaration made by the Brotherhood University regarding the admission of the appellant, and by the said declaration it permitted the appellant to believe the fact of his admission to be true, which actually was a true and known fact. And the Brotherhood University permitted the appellant to act upon such belief in a way that he did not opt for Ph.D. in any other university.

And now when they have cancelled his admission it is nearly impossible for him to gain admission in any other institution as he has not applied for other as his admission at Brotherhood University was confirmed earlier.

Another point that justifies the use of the doctrine is mentioned below.

The guidelines prescribed by Brotherhood University stated that to be qualified for SEP, a student must at the time of joining, opt for this mode and indicate in the application itself. So that no problem in future might arise.

Appellant at the time of joining opted for it then only he was taken under SEP, this means that his eligibility must have been cross checked that is his other qualifications which were needed.

It clarifies that they were aware that he did his graduation from Excel; still they allowed him to be a part of SEP, even when they have clearly stated that they do not give admission for postgraduate course to a student who is not from a recognised college.

If they had any objection in this regard then they should have objected it then and there, but no action was taken from them and even at the time when appellant opted for PhD. he was given admission without any objection this gives appellant the benefit of *doctrine of estoppel*.

Appellant is eligible for Brotherhood's Ph.D. course

To be eligible for PhD course, the appellant fulfilled all the conditions required by Brotherhood University. As per the guidelines prescribed by Brotherhood University, to be eligible for PhD. one must have a postgraduate degree. Appellant had the postgraduate degree of Brotherhood University which he got under SEP in 2007.

The Brotherhood University provided that a certain percentage of the PhD. course which has a fixed sanctioned intake, is reserved for the minority communities under National Reservation Policy. Appellant, belonging to Hardee community which was a minority community has the privilege right to claim the National Reservation Policy which he did and was given admission to the PhD. course.

“The problem of minority is not really a problem of establishment of equality but if taken literally, such equality would mean absolute identical treatment of both the minority and the majority. This would result only in equality and law but in inequality in fact. So though it may sound paradoxical but it is never the less true that the minorities can be protected not only if they have equality but also in certain circumstances differential treatment.”

PRAYER

In light of the facts of the case, issues presented, arguments advanced and authorities cited, the petitioner humbly prays before this Hon'ble Court that it may be pleased to:

- I. Set aside the orders passed by the Hon'ble High Court as it is illegal, arbitrary and erroneous.
- II. To reinstate the appellant in Brotherhood University for the completion of his PhD course.

The Hon'ble Court may be pleased to pass any such order allowing the petition and for this act of kindness the respondent is duty bound and shall ever pray.

All of which is respectfully submitted on behalf of the Appellant

Appellant
(Through Counsel)