

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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FARZANA BATOOL v. UNION OF INDIA: A CASE

COMMENTARY

Authored By-Souvik Gupta & Akanksha Nandy

Abstract

The case of *Farzana Batool v. Union of India*¹ is a landmark judgement in the field of the right to higher education. In this case writ petitions were filed by two students who were denied admission into their respective medical colleges despite being nominated for the same under the Ladakh central pool. While we are all aware of the fact that right to education is a Fundamental Right enshrined under Article 21-A of the Indian Constitution, this right is applicable only to children upto 14 years of age, which makes the right to higher education a grey area. In this judgement, the Supreme Court clarified that it is an affirmative obligation of the State to provide education to students at all levels, including professional education.

Introduction

One cannot emphasise enough on the importance of education. In the words of Nelson Mandela, “Education is the most powerful weapon which you can use to change the world.” In the earlier centuries, people failed to recognize the contribution of education towards the social and economic development of their nations. Receiving education has, throughout history, been influenced by factors such as gender, caste, class and financial status. It was only after the Second World War, that the right to education was considered as a basic human right, with the adoption of the Universal Declaration of Human Rights in 1948². Thereafter, a number of regional as well as international treaties have been signed to implement the right to education.

¹ Farzana Batool v. UOI (Writ Petition No. 364 of 2021)

² [https://www.right-to-education.org/page/international-law#:~:text=The%20Universal%20Declaration%20of%20Human%20Rights%20\(UDHR\)%2C%20adopted%20in,against%20Discrimination%20in%20Education%20\(1960\)](https://www.right-to-education.org/page/international-law#:~:text=The%20Universal%20Declaration%20of%20Human%20Rights%20(UDHR)%2C%20adopted%20in,against%20Discrimination%20in%20Education%20(1960)) [last visited on September 18, 2022]

In India, the right to education was recognized as a Fundamental Right only in 2002, when Article 21-A was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. This made education free and compulsory for all children between six to fourteen years of age. However, Article 21-A does not cover within its ambit, the right to pursue higher education and thus, the same cannot be said to be a Fundamental Right. Under such circumstances, it becomes pertinent to analyse the significance of higher education. Not only do the individuals pursuing higher education benefit from it, but it also greatly contributes to the nation and society at large. Higher education brings about both intellectual and psychological growth of an individual and thereby enhances their personality. As a result, individuals stand a chance to receive better job prospects, which eventually enhances their standard of living and causes an upward social mobility. Higher education enlightens young minds and encourages the democratic culture by promoting freedom of thought and expression. In the absence of higher education, technological innovations would not have been possible and neither would the field of medicine have been able to see any advancements. These are all crucial to the process of nation-building. It has been proved over the generations that it is through education that an individual can break the barriers of social and financial status that one is ascribed to at birth. It is possible for any person to have an achieved status which is acquired on their own merit through education and work. A parents' job title must not determine the future of their offspring. The son of a driver need not necessarily have to become a driver as well and this can be made possible only if quality education is imparted at all levels. As said by Erasmus, a Dutch philosopher and one of the greatest scholars of the Renaissance period, "The main hope of a nation lies in the proper education of its youth."

Facts Of The Case

In the present case, two writ petitions were filed before the Supreme Court under Article 32 of the Indian Constitution in 2021, seeking redressal to allow the petitioners, Ms. Farzana Batool and Mr. Mohammad Mehdi, to be able to pursue their higher education after being duly selected as candidates to two reputed medical colleges.

On 9th April, 2020, a Memorandum was issued by the Government of India through its Ministry of Health and Family Welfare (MHFW), which laid down certain guidelines for the allocation of seats for MBBS/BDS by general pool for the year 2020-2021.

Thereafter, on 23rd November, 2020, as per the said guidelines, allocations were made by the MHFW (Department of Health and Family Welfare) for medical seats of the Ladakh central pool for 2020- 2021. Under this, one seat was allotted to the Union Territory of Ladakh at Lady Hardinge Medical College (LHMC) and another seat at Maulana Azad Medical College (MAMC).

Pursuant to this, on 19th February, 2021, the Director of Health Services, Ladakh (DHSL) forwarded a list of selected candidates who were to be admitted in the allotted colleges through a communication issued by the Administration of the Union Territory of Ladakh.

In the said list, candidate number 4, Ms Farzana Batool, is the petitioner in Writ Petition (Civil) No 364 of 2021 and candidate number 1, Mr. Mohammad Mehdi Waziri, is the petitioner in Writ Petition (Civil) No 375 of 2021.

The grievance arose when the petitioners were not allowed admission to their allotted colleges, LHMC and MAMC, despite them being duly appointed by the DHSL, thereby depriving them of the opportunity to pursue their higher education. Under such circumstances, the petitioners were compelled to approach the Apex Court as their right to education was being violated. These writ petitions sought directions from the Supreme Court to ensure admission of all the selected students to the colleges allocated to them by the central pool.

Upon consideration of the plight of the petitioners, the Supreme Court issued a notice on 26th March, 2021 whereafter, Mr. Rupinder Singh Suri, Learned Additional Solicitor General, appeared on behalf of the Union of India and Mr. K. M. Nataraj, Learned Additional Solicitor General, represented the Administration of the Union Territory of Ladakh through the DHSL. In this case, neither of the Learned ASGs disputed the fact that the petitioners ought not to have been denied admission to their respective college when they were duly nominated by the DHSL

Issues Before The Court

1. Whether the right to higher education can be considered as a Fundamental Right or not?
2. Whether the access to quality education is being infringed on the basis of caste, class, gender, religion, disability or geographical location of a person?
3. Whether it is justified for students to be deprived from pursuing a professional education even after allocation has been made?
4. Whether accessibility of higher education in one's professional domain is indigenous or not?

Observation Of The Court

The Supreme Court in this case has highlighted and been vocal about the fact that access to education at a professional level is a grave issue which plagues our society. In the same lines, the Supreme Court has harped on the significance of nurturing and encouraging an environment for students to pursue professional education. The Apex Court of the country has further noted that proper access to education should be an important issue for students whose backgrounds such as caste, class, gender, religion, disability and geographic location often pose unbreachable barriers in their way of accessing proper education.

The Court further put emphasis on the fact that since the allocations have been made in favour of the two petitioners, there are no justifiable grounds to repudiate their admission to their courses of choice for which the Administration of Ladakh has already made allocations under the central pool seats for admission into MBBS degree course set up and established by the Union Ministry of Health and Family Welfare.

Thus, keeping such facts in hindsight, the Supreme Court has ordered that the petitioner's admission should not be hampered and such admission be facilitated within a week from the date of the Court's order.

The Supreme Court observed that “accessibility” is one of the crucial factors in any education ecosystem, which applies to every person regardless of their stage of education. The judges, while delivering their judgement, have referred to the observations of the Committee on Economic, Social, and Cultural Rights (ICESCR Committee) and the Universal Declaration of Human Rights (UDHR). This case has further elucidated that “accessibility” with regard to education should mean “accessible to all on the basis of merit” and has opined that progressive steps should be taken to ensure that financial constraints should not be a hurdle in the way of accessing education. The Supreme Court noted that access to quality education at a professional level is a serious issue and hence focus should be shifted to facilitating the students with a healthy environment to continue pursuing their education and not be discouraged by any financial or administrative constraint.

Judgement

In the above case of **Farzana Batool v Union of India (UOI) and Ors**³, the Supreme Court held that:

"While the right to pursue higher (professional) education has not been spelled out as a Fundamental Right in Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels."⁴

In the above deliberated case, the Supreme Court came to a unanimous decision that despite the fact that education at the professional level has nowhere been explicitly mentioned as a Fundamental Right in the Constitution of India, Part III of the Indian Constitution does talk about Right to Equality including equality before the law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment. In this instance, the State has an affirmative obligation towards its people to provide access to education at all levels and to look after the fact that financial position and status does not prevent a person from obtaining admission in terms of the allocation which

³ *Supra 1*

⁴ https://main.sci.gov.in/supremecourt/2021/7470/7470_2021_36_32_27430_Order_09-Apr-2021.pdf [last visited on September 15, 2022]

have already been made in favour of such persons under the central pool seats. To back such reasoning with action, the Supreme Court directed that the admission procedures for the petitioners Ms. Farzana Batool and Mr. Mohammed Mehdi Waziri be concluded at LHMC and MAMC respectively within a week from the date of judgement. The Supreme Court further mentioned that all the students whose names were mentioned in Annexure A of the notification (dated 19th February 2021) be accepted into such concerned institutions. It also stated that such an order should be considered as a general precedent for students facing similar barriers to move the Apex Court as access to quality education is an intrinsic and basic right of every individual.

The court came to the conclusion that professional education is an indispensable aspect of student life and therefore every student should be bestowed with a nutritious environment to flourish. The court while delivering such judgement highlighted the term “accessibility” which can be considered as an integral part of the educational world. The Court puts weight on this term and accepted that accessibility of education must always be on the basis of the eminence of the student and not on the basis of their financial status. In this instance the court has echoed the opinion of the Committee on Economic, Social and Cultural Rights (ICESCR Committee) which highlighted two components of ‘accessibility’. First, is the guarantee of non-discrimination, in relation to which it notes that “education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”⁵. The second, economic accessibility, meaning that the state party must take steps to ensure that financial constraints do not come in the way of accessing education.⁶

The future of a student must not be hindered or threatened in any way on the basis of their caste, class, race, economic status, geographical region, etc. Hence, the court in this case has said that “While the right to pursue higher (professional) education has not been spelled out as a Fundamental Right in Part III of the Constitution, it bears emphasis that access to

⁵ https://main.sci.gov.in/supremecourt/2021/7470/7470_2021_36_32_27430_Order_09-Apr-2021.pdf [last visited on September 15, 2022]

⁶ *Ibid*

professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels.”.⁷

As a result, the Supreme Court directed that the petitioners, Ms. Farzana Batool and Mr. Mohammed Mehdi Waziri, complete their admission formalities at LHMC and MAMC, respectively, within one week of the date of the judgement. The Supreme Court also stated that all students whose names were mentioned in Annexure A to the notification dated February 19, 2021, should be granted admission to the concerned institutions, if not already done so, and that the court is issuing the order as a general direction to avoid the possibility of each of the similarly placed students being required to come to this court, as education is a Fundamental Right and is of utmost importance.

Case Comment

In this ever expanding and digitalized society where innovations are being made in every sector to make the lives of the people easier and comfortable, aspiring to get proper education should not be a hurdle which people should be facing anymore. Yet we are witness to the fact that the so called financially distressed and marginalized sections of the society face a huge barrier when it comes to something as basic as quality education. Education is an important tool for a person to expand their domain of knowledge and seek newer pastures for better job opportunities, it is a basic right which should be guaranteed to every student of the country regardless of their social and financial status.

In this case the two petitioners namely, Ms Farzana Batool and Mr Mohammad Mehdi Waziri had filed a petition under Article 32 of the Indian Constitution which deals with the Right to Constitutional remedy so as to move the Supreme Court for redressal for violation of their Fundamental Rights. Their only motive and aim was to open the door for their admission in LHMC and MAMC respectively so that they could continue their ambition of pursuing a MBBS degree. In this case the Supreme Court however did clarify that education at a

⁷ Edu Legal <https://www.edulegal.org/blog/right-to-higher-education-not-fundamental-right/> [last visited on September 16, 2022]

professional level does not come under the Fundamental Right of education guaranteed under the Constitution of India. However, if any student is being denied an opportunity to get admission such as financial condition or on any other ground apart from merit then it is indeed a grave violation of his or her rights. Through this judgement the Supreme Court not only facilitates students to get admissions in colleges where seats have been allotted for them but also sets a precedent to the society that indeed you can move the Apex Court if a person is being denied an opportunity to get admission into an educational institution for unjust reasons. In setting such precedent the Supreme Court has not only delivered justice to the petitioners but has also aimed to encourage other students facing such similar situations to be vocal about their own educational rights. While delivering the judgement Justice D.Y. Chandrachud and Justice M.R. Shah have rightly pointed out that it is the moral and civic duty of the State to furnish a durable education ecosystem so as to provide the students with their basic right of education since they are the future of the country and the world at large.

Conclusion

The prima facie issue in the case of *Farzana Batool v. Union of India and Ors*⁸ was that two diligent medical aspirants were being denied admission into the reputed medical colleges, LHMC and MAMC, despite being nominated for admission to the colleges by the DHSL. The petitioners, Ms. Farzana Batool and Mr. Mohammad Mehdi, were thus, being deprived of the opportunity to pursue their dreams of establishing themselves as successful medical practitioners. In order to redress their grievance, the students were compelled to file two writ petitions under Article 32 of the Indian Constitution as the denial of their admission was resulting in violation of their right to education.

After carefully scrutinising the facts of the case and the issues at hand, the Supreme Court highlighted the importance of education and ruled in favour of the petitioners. Through this judgement, the Apex Court reaffirms the fact that it is an affirmative obligation on the part of

⁸ *Supra 1*

the State to ensure access to professional education to all, sans discrimination, even though

the right to pursue higher education is not a Fundamental Right covered under Article 21A of the Constitution.

In our opinion the Supreme Court by delivering such judgement has not only paved a way of helping students to gain admission to the colleges allotted to them by the central pool but it also calibrates an example for the society at large that education is an important aspect for all students and that the Supreme Court recognizes such importance as well. This judgement is not just justice to the two students who filed the petitions but to all the students across the country who are dealt a severe blow to their educational aspirations. It is noteworthy to remind ourselves that at no point should a student have to compromise on his or her education owing to their financial or societal status and such inequalities and injustice should be radically eradicated from our society and our system since these very students form the bedrock and will help to shape the future of our nation. It is a vehement reminder to our society and our education system that it is our duty and moral responsibility to provide the students with their intrinsic right to education if we are to lay down the foundations of a cogent educational ecosystem. The future of the nation lies in the hands of the youth and it is our moral responsibility to provide them with education at all levels so that they can become assets to our nation.