CHAPTER II

CANCELLATION OF ADMISSION

After admission of a student to an educational institution, the authorities may discover new facts warranting cancellation of the admission. Thus, some of the situations where courts upheld the cancellation of admission are : discovery of the fact that the student did not belong to the Scheduled Caste;[1] or that the student converted himself from Christianity to Hinduism so as to get the benefit of Scheduled Caste reservation even though there was no evidence that the community to which he got himself converted had accepted him within its fold;[2] and the discovery that the student had been convicted of a serious offence and there were other criminal proceedings pending against him as it is essential that only desirable students be admitted in an educational institution to maintain discipline,[3] and the discovery of wrong submission of marks by a student.[4]

1. Kajari Saha v. State, A.I.R. 1976 Cal. 359.
2. J. Das v. State, A.I.R. 1981 Ker. 164.
3. Prasant Pattajoshy v. Lingaraj Law College, A.I.R. 1977 Ori. 107.
4. S.A. Manjunath v. University of Bangalore, A.I.R. 1967 Mys. 119.

Though while giving admission to a student, an educational authority is not required to observe natural justice, yet it has to do so if it cancels the admission once granted to a student. However, where the facts on which cancellation is based are indisputable, e.g., conviction for a criminal offence, it is not necessary to observe natural justice,[5] or an established fact of the actual marks obtained by a student.[6] Where, however, the facts are disputable, the authority has to provide a reasonable opportunity of being heard to the student concerned before cancelling his admission or examination. It will depend upon the facts of each case whether the authority violated natural justice. But the courts will not upset the decision of educational authorities where some irregularity which did not prejudice the case of the student was committed.[7] Failure to observe natural justice where the facts are in dispute will result in the quashing of the order of cancellation of admission by the court. In Harijander Singh v. Kakatiya Medical College,[8] the student was verbally told to come on a particular day to hear him but he came

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5. Prasant Pattajoshy v. Lingaraj Law College, supra note 3.
6. S.A. Manjunath, supra note 4.
7. Kajari Saha, supra note 1.
8. A.I.R. 1975 A.P. 35.

the next day on the plea that it was that particular date was given to him and the authorities did not hear him.

Once a candidate has been given admission, there is a tendency on the part of the courts not to give countenance to the action of cancellation of admission by an educational authority, unless the admission was clearly violative of the prescribed eligibility qualifications and there was no delay on the part of the authority in taking the appropriate action. In K.P. Shivadatta v. Government Medical College,[9] the rules provided for cancellation of admission if a student who was "ineligible" was inadvertently admitted. Here the petitioner who was less meritorious than another student in terms of marks obtained by him at the examination prescribed for admission was admitted by mistake. On discovery of this the authorities cancelled the admission. It was held that as the petitioner fulfilled the "eligibility" requirement, his admission cannot be cancelled. The court took a narrow view of "eligibility" by stating that "we are unable to agree ... that the eligibility of the candidate comprehends within its ambit not only the legal qualifications for admission but also the merit of the candidates".[9a] In view of the

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9. A.I.R. 1972 Mys. 135.

9a. Id. at 137.

court under the rules the powers and functions of the selection committee cease on publication of the list of selected candidates and thereafter it had no power to cancel the admission.[10] This statement of the court is correct in the context of the situation in hand, but educational authorities are not prevented from cancelling an admission when soon after the admission it is discovered that the candidate was not legally qualified.[11]

At times, the educational authorities may grant only provisional admission. It will be a question of fact in each case whether the student was informed about his admission being provisional. Further, contention of the authorities that the admission was provisional would not make it so if the facts did not so warrant. There should be some valid reasons for the authorities to give a provisional admission. In the absence of valid reasons, an admission will not be treated as provisional even though the admission authority has said so. Where the application is complete, satisfies the prescribed requirements for admission, documents accompanying the application are in order and there are vacancies in the course, there is no question of giving a provisional admission.[12] However, a provisional admission may be

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10. On these aspects also see S.A. Manjunath, *supra* note 4.

11. See the cases cited in *supra* notes 1 to 4.

12. Zeenat v. Prince of Wales Medical College, A.I.R. 1971 Pat. 43.

made in such circumstances as the documents not being complete, or they need verification, or the admission requires approval of the Vice-Chancellor or other university authorities.[13] Even if admission is provisional, the authorities in cancelling the admission should not act arbitrarily and their decision should be based on relevant grounds.[14] However, one basic difference between cancellation of a provisional admission and regular admission is that in the former case natural justice need not be observed.[15]

Whether the admission is provisional or regular when the authorities subsequently find some irregularity or defect in the admission requiring cancellation, it is expected of them to act with diligence as the student may have pursued the course for some period of time and the cancellation may cause substantial prejudice to him. In quashing the orders of the authorities on account of delay on their part, the courts have invoked the doctrine of equitable estoppel. The leading High Court case is _Delhi University_ v. _Ashok Kumar_.[16] In

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13. See _ibid._

14. _Ibid._

15. _Ibid._

16. A.I.R. 1968 Del. 131.

this case, the student had passed the secondary certificate examination from the Gujarat University and was provisionally admitted to the B.A. First Year Course of the Delhi University. After over a year the university informed him that he was ineligible to join the course because the Gujarat examination was not recognised by the Delhi University for admission to the course. During this period, the student had continued to study in his class and even passed the examination. The statutes of the university authorised the Academic Council to grant exemption from the prescribed requirements for admission. In the circumstances, the court held that at the most the initial admission of the student was irregular and not *ultra vires* the statutes of the university. Applying the doctrine of equitable estoppel against the university, the court quashed the order of the university. The court did not accept the argument that such delays were inevitable as the university had to deal with a very large number of cases. To meet this task the university "must keep itself equal to it", and "economy" cannot be the answer. A similar approach was adopted in somewhat a similar case where the court found, contrary to the contention of the educational institution, that the admission was regular and not provisional.[17]

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17. *K.K. Jacob* v. *Madurai University*, A.I.R. 1978 Mad. 315.

It has also been held that the principal of an educational institution is an agent of the university. Hence his action is binding on the university.[18]

At times, the courts are faced with a great dilemma, in terms of demands of justice. After a lapse of a few years when a student has already passed the examination, the authorities may discover that the student was ineligible to be admitted to the course either because of his own fraud or otherwise. In <u>Ranbir Singh</u> v. <u>State of Punjab</u>,[19] a student was admitted to the M.B.B.S. course in 1970 as a Scheduled Caste candidate. After he had passed the examination in 1976 and completed the period of internship, the college issued him a notice proposing to cancel his admission and the decree on the ground that he did not belong to a Scheduled Caste. It was held that the college could not do so at that very late stage. The college should have verified his certificate at the time of admission or soon thereafter. Further, after completion of the course, the principal had no jurisdiction to say that as the petitioner had obtained the admission by fraud on the basis of a false certificate his name should be removed from the rolls.

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18. <u>Ibid</u>.

19. A.I.R. [illegible] P. & H. 109.

Educational institutions quite often have limited number of seats and they have to leave out a large number of candidates even though those students are otherwise eligible. Sometimes, eligible students, are left out because of the policy of reservation. It has quite often happened that the students who failed to get admission, challenged the reservation policy and the court found it to be unconstitutional. The natural consequence of such a holding is to cancel the admission given to students on the basis of invalid policy of reservations. In the meanwhile, these wrongly admitted students may have pursued their study for a considerable period of time. Such a situation again raises the dilemma about the justice of the matter. Legally, the students who had been left out ought to be admitted but this could happen only if the admission of wrongly admitted students is cancelled and it may be unjust to do so. Such a situation was faced by the Supreme Court in State of Kerala v. T.P. Roshana.[20] Here, the court had found that 30 students were wrongly admitted to the medical course on account of the reservation policy which the court found to be unconstitutional. The court after consulting the university authorities passed the order asking the colleges to increase 30 seats to accommodate students who had been left out, instead of passing an order cancelling the admission of 30 students.[21]

20. A.I.R. 1979 S.C. 765.

21. Also Jagdish Saran v. Union of India, A.I.R. 1980 S.C. 820.