

Motala and Another v University of Natal

Supreme Court of South Africa, Durban and Coast Local Division
1995 (3) BCLR 374 (D); 1995 SACLX LEXIS 256

Case at a glance

Full Citation

1995 (3) BCLR 374 (D); 1995 SACLX LEXIS 256

Forum

Supreme court of South Africa

Date of decision

24/02/1995

Summary of decision

In this case, parents of an Indian pupil brought a case against University of Natal because her application to medical school was rejected despite the satisfactory results she obtained in her qualifying examinations. They claimed that the admission process was discriminatory because it did not consider all the applications equally, but set higher admission standards for Indian students and lower ones for African students. The parents argued that this is as a violation of 'equal access to educational institution' provision of the constitution as well as sections 8(1) and 8 (2) in regard to 'setting a discriminatory practice'. The Court agreed that while Indian community had been decidedly disadvantaged by the apartheid system, African pupils were even more so. Accordingly, the Court held that a selection system which compensated for this discrepancy does not violate the provisions of sections 8(1) and 8(2) of the Constitution.

Significance to the right to education

Positive discrimination measures in favour of previously disadvantaged communities is a solution to inequalities generated by the latter. This case highlights the difference social and cultural backgrounds have on academic performance at school, and confirms the relevance of positive discrimination when it comes to evaluating test scores and setting the standards for admission to higher education.

Key words

Disadvantaged groups, discrimination, higher education, positive measures

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Context

‘South Africa consists of one of the most diverse societies in the world, comprising of people from different cultures, race, religion, gender and languages. During the apartheid era, unjust laws were applied to create disadvantages amongst races and gender. Women as well as people from the African, Coloured and Indian races were subjected to exclusions from amenities of life, education and labour arenas under the apartheid regime. With the emergence of democracy, the acknowledgement of the injustices perpetuated against these classes of people and the quest to achieve an egalitarian society, the need for restorative measures developed, in order to redress the disadvantages that those classes of people endured’¹

This is the case in education where higher education institutions give preferential admission treatment to some categories of pupils, namely members of disadvantaged communities.

Thus, the University of Natal favoured students from the African community, noting that over the years many Indian doctors had qualified at the medical faculty, and relatively, not many Black or ‘Coloured’ students had qualified. According to the faculty policy, only forty Indian students would be admitted with the aim to establish more equity through this affirmative action policy towards African pupils.

Facts

In 1994, a high school student from the Indian community was refused admission to the faculty of medicine at the University of Natal in South Africa based on this policy. To be admitted to the school of medicine a matriculation course should be followed and certain grades should be obtained. The Indian student was considered a highly gifted student amongst her peers, she followed the required matriculation courses and obtained high grades: she passed her standard nine examinations with an aggregate of 81% in 1993, and then she passed her matriculation exam in 1994 with “A” and “B” in all higher grade subjects. The university explained that the rejection decision was based on the affirmative action policy described above. Only Indian students with six 'A' passes in the ex-house of delegates matriculation examination would be considered for admission.

In the past, other Indian pupils with similar results had initiated an action against the university in court and were later admitted to the university. The parents of this student brought a case against the University of Natal claiming that the admission process was discriminatory because it did not consider all the applications equally but set higher admission standards for Indian students and lower ones for African students. They argued that this is as a violation of ‘the right to equal access to educational institution’ as set up in section 32(a) of the South African constitution as well as the right to non-discrimination protected under sections 8(1) and 8(2).

¹ Ramesh Harkoo, *Has affirmative action become an illusionary right for certain designated groups?* University of Kwazulu Natal, 2014.

Issue

The constitutional court faced two main issues:

1. Are higher education institutions considered 'educational institutions' delivering 'basic education' in the meaning of article 32(a) of the constitution?
2. Are affirmative action policies establishing positive discrimination procedure for admissions to medical school based on the community of background unconstitutional?

Decision

The court decided that higher education establishments are not part of the 'educational institutions' delivering 'basic education' as per section 32(a) providing that 'everyone shall have the right to basic education and to equal access to educational institutions'. As such, the right to access higher education institutions is not subject to the same absolute guarantee.

The Court also noted that the contested provision establishing a discrimination based on ethnicity, because it only allows 40 Indian students to be admitted to the school of medicine, would not be upheld in violation of article 8(2) of the constitution because it is designed to achieve the adequate protection and advancement of persons or groups or categories of a disadvantaged category of people.

Although the Court accepted that the Indian community had been decidedly disadvantaged by the apartheid system, it held that the evidence established that the degree of disadvantage to which African pupils had been subjected was significantly greater than that suffered by their Indian counterparts. Accordingly, the Court held that a selection system which compensated for this discrepancy would not run counter to the provisions of sections 8(1) and 8(2) of the Constitution.

Commentary

States have an immediate obligation to ensure the right to non-discrimination and equality in the access to and enjoyment of the right to higher education. Despite that, indirect and systemic discriminations continue to affect the right to higher education raising inequalities and exclusion, mainly regarding access to higher education.

One criterion for admission into higher education establishments is merit measured on the grades obtained by students in their high school qualifying examinations. This is why the quality of education received by high school pupils plays a crucial role in admission to higher education establishments. While this criterion is not discriminatory in itself, it is susceptible to reinforcing pre-existing inequalities.

To reduce the impact of said inequalities, some establishments follow inclusivity-based policies. Such as the policy followed by the University Natal in this instance. For the Supreme Court, this kind of equalising preferential treatment given to students coming from African communities to enter the school of medicine are legitimate given the disadvantages this community faces and has faced over the last years.

This decision sets a precedent for the validity of positive discriminatory measures. The court upheld the constitutionality of the preference on the strength of the different degrees of disadvantage suffered by each group. According to JL Pretorius 'this finding does not seem to have been based on a general rating of the groups in terms of degrees of disadvantage, but on an appropriate contextualised consideration of different degrees of educational disadvantage'²

Additional resources

Nomfundo Ramalekana, [What's so wrong with quotas? An argument for the permissibility of quote under s 9\(2\) of the South African Constitution](#), Constitutional Court Review 2020, Volume 10, 251-299

Jonathan Partington and Adriaan van der Walt, [The development of defences in unfair discrimination cases](#). Sabinet. 2005

Relevant legal instruments

Section 8(2) of the South African Constitution:

(2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

Section 8 (3) of the South Africa Constitution:

(3) (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.

Section 32(a) of the South Africa Constitution:

Every person shall have the right-

(a) to basic education and to equal access to educational institutions;

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