

(2006) 01 UK CK 0001
In the Uttarakhand High Court

Abhishek

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Citation : AIR 2006 Utt 64 : (2006) 2 UC 1011 : (2006) 1 UD 143

Hon'ble Judges : Cyriac Joseph, C.J;B.C. Kandpal, J

Bench : Division Bench

Judgement

Cyriac Joseph, C.J.—The petitioner is a permanent resident of district Muzaffarnagar in the State of U.P. He applied for admission to the undergraduate Programme (B.V.Sc. and A.H.) of the G. B. Pant University of Agriculture and Technology, Pant Nagar (hereinafter referred to as the University) for the year 2003-2004. He appeared in the entrance examination conducted by the University on 15-6-2003. He secured 428 out of 600 marks and his rank in the Composite Merit List was 27. He was called for counselling held on 26-7-2003. He was admitted to the B.V.Sc. and A.H. Degree Course against "Payment Seat". On account of his admission against a Payment Seat, he was required to pay a sum of Rs. 1.00.000/- in addition to other University-fees. He made all the required payments and got admitted to the Course for the year 2003-2004.

2. According to the Distribution of Seats stated in the Prospectus 2003-2004 issued by the University, 20% of the sanctioned seats, after allocation of seats to I.C.A.R./V.C.I in all undergraduate (except B. Tech.), Master's and Ph.D. Programmes, were "Payment Seats". The candidates desirous of seeking admission against Payment Seats were required to appear in the Entrance Examination and qualify as per requirement, to a degree programme in which they sought admission. Academic Eligibility qualification for such candidates would be the same as for General candidates seeking admission through Entrance Examination. The Programme would be allotted to them as per their merit in the Entrance Examination. The candidates should pay Rs. 1.00,000/- for a seat in B.V.Sc. and A. H. and Rs. 40.000/-for admission to a seat in other

Undergraduate and Post Graduate programmes per year, as "Fee against Payment Seats" in addition to other University fee and Rs. 50,000/- and Rs. 20,000/- for each additional Semester respectively, if degree was extended. The fee against Payment Seat would not be refunded once a candidate had registered in the programme.

3. On 26-2-2004, the third respondent -- Registrar of the University -- issued Annexure 4 order rescheduling the fee structure for the Session 2004-2005. According to Annexure 4, the University decided not to charge any additional fee from candidates residing outside the State of Uttaranchal. As per Annexure 4 order dated 26-2-2004, the tuition fee per year for the Session 2004-2005 in respect of B.V.Sc. and A.H. Course was increased from the existing Rupees 6,000/- to Rs. 15,000/-.

4. The University has not been charging any additional fee (Fee against Payment Seat) for any course from students who took admission in the year 2004-2005 or thereafter. Hence the petitioner, along with other similarly situated candidates, submitted Annexure 5 representation to the second respondent Vice Chancellor on 7-1-2005 requesting that in the light of the decision of the Hon'ble Supreme Court in the case T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. they may be exempted from paying the fee against Payment Seats and that only the fees for Free Seat may be charged from them. The petitioner and others were orally informed by the respondents that they would have to pay the additional fee of Rs. 1,00,000/- per year in addition to the University fee for the whole course. Faced with the above situation of having to pay the additional fee of Rs. 1,00,000/- for the year 2005-2006, the petitioner filed this writ petition on 19-6-2005 praying for a direction to the respondents not to charge from the petitioner and other students the sum of Rs. 1,00,000/- per year as additional fee. He also prayed for a direction to the respondents to exempt him from payment of the said additional fee for the remaining period of the B.V.Sc. and A.H. Degree Course. There is a further prayer for directing the respondents to refund to the petitioner, the additional fee collected from the petitioner with admissible interest.

5. The writ petition was admitted on 24-6-2005. On 25-7-2005, after hearing the learned Counsel for the petitioner and the respondents, the following interim order was passed by this Court:

Hence there will be an interim order directing that without prejudice to the contentions of the petitioner and the respondents, the petitioner shall pay a sum of Rs. 15,000/- (Rupees fifteen thousand only) towards tuition fees for the year 2005-2006 and the said amount shall be accepted by the respondents subject to the final decision in the writ petition.

6. A counter affidavit has been filed on behalf of the University. According to the averments in the counter affidavit, the petitioner was eligible for admission in the B.V.Sc. and A. H. Degree Course only against Payment Seat. It was clearly

mentioned in the Advertisement/Prospects 2003-2004 that candidates admitted against Payment Seats in B.V.Sc. and A.H. Programme have to pay Rs. 1,00,000/- per year as fee against Payment Seats in addition to other University fees. Admission against Payment Seats also were made strictly on merits. Candidates having domicile of Uttaranchal State as well as candidates of other State category were admitted on Payment Seats as per their merit. For admissions in the academic year 2002-2003 and 2003-2004, the State Government had issued a Government Order dated 16-5-2002 fixing the admission policy. Under the said policy, 20% of total seats had been reserved for Payment Seats for the candidates of State of Uttaranchal as well as other States. But in pursuance of the judgment of the Hon'ble Supreme Court, the University decided to abolish the system of Payment Seats from the academic session 2004-2005, even though there was heavy revenue loss to the University due to the abolition of Payment Seats. Therefore, it was decided to revise the fee structure from the academic year 2004-2005. The Government of Uttaranchal vide its order dated 28-2-2004, while approving abolition of Payment Seats, imposed the condition that no additional fund would be given to the University on account of the abolition of Payment Seats. It is also stated in the counter affidavit that from the academic session 2004-2005 the University is admitting, through its entrance examination, only the candidates who are domicile of Uttaranchal State. Candidates admitted through entrance examination conducted by V.C.I. on All India Basis are charged fee at par with the fee charged from the candidates of domicile of Uttaranchal State. The fee of Rs. 1,00,000/- per year as fee against Payment Seats in B.V.Sc. and A. H. Programme is being charged from the students who were admitted against Payment Seats irrespective of their State of residence. It is further stated in the counter affidavit that the representation submitted by the petitioner was considered and rejected by the Vice Chancellor. It is also stated that the judgment of the Hon'ble Supreme Court in the cases of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Islamic Academy of Education v. State of Karnataka did not upset the admissions already finalised. According to the respondents, the system of Payment Seats was abolished with effect from the academic year 2004-2005 in pursuance of the judgment of the Hon'ble Supreme Court. In the year 2003-2004, out of the 16 candidates who were admitted against Payment Seats in the year 2003-2004, 6 were domicile of the State of Uttaranchal and the remaining 10 were from other States. All the 16 candidates have paid Rs. 1,00,000/- per annum in addition to other University fees during the last two years. It is contended in the counter affidavit that, as per Section 16 of the University Act, the Academic Council shall be in charge of the academic affairs of the University and shall have the control and general regulation of and be responsible for the maintenance of standards of instruction, education and examination and for the requirements for obtaining Degrees and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It is also contended that the Board of

Management has the power to prescribe any other fee. The Academic Council in the year 2001 -2002 recommended Payment Seats which were approved by the Board of Management. The Payment Seats were abolished w.e.f. 2004-2005 in pursuance of the judgment of the Hon"ble Supreme Court.

7. The petitioner has filed a rejoinder affidavit contending that once the system of Payment Seats is abolished by the University, no additional fee, as fee against Payment Seat, can be charged from the petitioner.

8. In the light of the pleadings in the case, the only question that arises for consideration is whether the respondent University is entitled to charge additional fee as fee against Payment Seat even after the abolition of the system of Payment Seats, on the ground that the petitioner had been admitted to the B.V.Sc. and A.H. Course against a Payment Seat before the abolition of the system of Payment Seats.

9. It is not in dispute that as per the Government Order dated 28-2-2004 (Annexure 2 to the counter affidavit), the admission policy of G. B. Pant University of Agriculture and Technology, Pant Nagar was modified. According to the said Government Order dated 28-2-2004, the system of Payment Seats stood abolished. It is clear from paragraph 8 of the Government Order that the Government expected shortfall in the income of the University due to the abolition of Payment Seats and that the Government wanted the University to make up for such shortfall from its own resources and that the Government would not reimburse the amount of such shortfall in income. In the Government Order dated 28-2-2004, it is not stated that notwithstanding the abolition of the Payment Seats students admitted during the previous years will have to continue to pay additional amount as fee against Payment Seats.

10. Learned Counsel for the University made available a copy of the minutes of the 327th Meeting of the Academic Council held on 21-1-2004. The agenda under consideration was "to consider the admission policy for the academic session 2004-2005". The Academic Council decided as follows:

In view of the judgment of the Hon"ble Supreme Court, the provision of Payment Seats and N.R.I. Wards/N.R.I. Sponsored candidates shall be deleted.

In the above-mentioned decision of the Academic Council also, it is not stated that students admitted during the previous academic years against Payment Seats will have to continue to pay additional fees as fee against Payment Seats.

11. According to the learned Counsel for the University, it was on the basis of a decision of the Board of Management in its meeting held on 3-2-2004 that the third respondent Registrar issued Annexure 4 order dated 26-2-2004 revising the fees in respect of the students admitted in the academic session 2004-2005. It is contended that since the above-mentioned revision of the fees is in respect of students admitted in the academic session 2004-2005, students like the petitioner who were admitted during the previous academic years need not pay

the revised fee and they need pay only the existing fee, but the students admitted during the previous years against Payment Seats will have to pay additional amount as fee against Payment Seats. But according to the learned Counsel for the petitioner, once the Hon"ble Supreme Court declared the system of Payment Seats as illegal and unreasonable and once the University decided to abolish the system of Payment Seats, the University is not entitled to charge additional fee as fee against Payment Seat from the students. Learned Counsel also stated that the petitioner is willing to pay the revised fees as in the case of students admitted in 2004-2005.

12. It is obvious that the University and the Government decided to abolish the system of Payment Seats in view of the judgment of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . It is not disputed that the system of Payment Seats recognized by the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., was found to be illegal by the Supreme Court in the later judgment in T.M.A. Pai Foundation case. In the later decision, the Hon"ble Supreme Court held that the decision in Unni Krishnan's case, insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct and to that extent, the said decision and the consequent directions given to the U.G.C., A.I.C.T.E., Medical Council of India, Central and State Governments etc. were overruled. In paragraph 37 of the judgment, the Hon"ble Supreme Court observed as follows:

37. The Unni Krishnan's judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of education, a scheme of "free" and "payment" seats was evolved on the assumption that the economic capacity of the first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.

In paragraph 45, the Hon"ble Supreme Court held as follows:

45. In view of the discussion hereinabove, we hold that the decision in Unni Krishnan's case, insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, Medical Council of India, Central and State Governments, etc., are overruled.

In view of the above declaration by the Hon''ble Supreme Court, the system of Payment Seats is illegal and unreasonable and a student cannot be compelled to pay any additional amount as fee against Payment Seat. Even if the student had been admitted prior to the abolition of the system of Payment Seats by the University on the basis of the judgment of the Hon''ble Supreme Court, he cannot be compelled to make any payment which has been held to be illegal and unreasonable. The date of admission of the student cannot change the illegal and unreasonable character of the demand for such additional amount as fee against Payment Seat.

13. In the light of the discussion above, we are of the view that the respondents are not entitled to charge any additional fee as fee against Payment Seat from the petitioner even though he was admitted to the B.V.Sc. and A.H. Course in the academic year 2003-2004. Since the petitioner had paid such additional fee without protest for the year 2004-2005, we do not consider it proper or just to direct the University to refund the additional amount paid by the petitioner in the year 2004-2005. It is declared that from the year 2005-2006 onwards the petitioner will not be liable to pay any additional amount as fee against Payment Seat. But it is made clear that the respondents will be free to demand from the petitioner fees at the rates revised as per Annexure 4 or any subsequent revision.

14. The writ petition is disposed of in the above terms.