
(2012) 10 AHC CK 0248
In the Allahabad High Court
Case No : C.M.W.P. No. 55711 of 2012

Adeed Nawaz

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Citation : (2013) 3 AWC 3221

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Rakesh Pande and Madan Lal Srivastava, for the Appellant; S.S. Singh, for the Respondent

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Rakesh Pandey, learned counsel for the petitioner. The petitioner has been admitted in the B.A. LL.B. Course of the Aligarh Muslim University and has been allocated the campus of Malappuram in Kerala. The petitioner while filling his option had given his first preference for the Aligarh University Campus, for Murshidabad in West Bengal in the second place and Malappuram Kerala in the third place.

2. The revision of such an option is governed by Clause 31 of the Guide to Admissions 2012-13 quoted herein under:

31. A candidate provisionally admitted to a Course/Branch/Main Subject/Stream/Specialization of lower preference as mentioned in the Application Form, may be upgraded to a Course/Branch/Main Subject/Stream/Specialization of higher preference as mentioned in the Application Form in the event of a vacancy arising therein.

A candidate provisionally admitted to a Course/Branch/Main Subject/Stream/Specialization over and above the preferences as indicated in his/her Application Form may be upgraded to a Course/Branch/Main Subject/Stream/Specialization over and above the preferences as indicated in the Application Form or to a preference as mentioned in the Application Form in the event of a vacancy

arising therein.

A candidate who wants to retain the Course/Branch/Main Subject/Stream/Specialization, in which he/she has been admitted, shall submit an undertaking on Notary Public Affidavit to the Deputy/Assistant Controller (Admissions), Admission Section, A.M.U., Aligarh on the same date of admission for not upgrading his/her course/Branch/Main Subject/Stream/Specialization in which he/she was originally admitted.

3. The petitioner was admittedly given admission at Malappuram and he deposited his fee and started pursuing his course there.

4. The petitioner contends that one of his brothers Nadeem Ahmad is also studying in the same campus and, therefore, he wanted to continue in Kerala.

5. The third paragraph of Clause 31 quoted hereinabove clearly requires the filing of an affidavit giving an undertaking that a candidate does not wish to get his place and campus of admission upgraded against which he was originally admitted.

6. The petitioner admittedly did not file any such affidavit and, therefore, since he had given his second option for Murshidabad his admission has been upgraded by the impugned order and the petitioner has been called upon to now pursue his course finally at Murshidabad. It is this communication dated 8th October, 2012 Annexure-9 to the writ petition which is being challenged contending that had the petitioner been given any information earlier he would have opted for Malappuram itself, even though it was his third option.

7. In the alternative, there is a challenge to paragraphs 31 and 32 of the Admission Guideline to declare it as ultra-vires contending that it is absolutely arbitrary and the filing of the affidavit has no rational nexus with the object of upgradation.

8. Having heard Sri Pandey so far as the rules are concerned they are clear and if the petitioner had failed to give an undertaking on a notary public affidavit his allotment could have been altered in terms thereof.

9. The petitioner had given his second option for Murshidabad, and therefore, he has been upgraded from Malappuram to Murshidabad as Malappuram was his third option.

10. Coming to the argument with regard to the vires of paragraphs 31 and 32 this Court is clearly of the opinion that it does not suffer from any arbitrariness, inasmuch as, such a clause has been included to secure the final option of a candidate who after getting admission should not be allowed to change the same. This in no way prejudices a candidate who has already been given three options and he has availed of the benefit of admission accordingly. This also facilitates the adjustment of options of the candidates.

11. Even otherwise after having sought admission under the rules, the petitioner

cannot be permitted to turn around and challenge the provisions of the rules itself to which he will be deemed to have acquiesced and waived his right of challenge in view of the law laid down by the Apex Court in the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, .

12. In the aforesaid circumstances, the prayer made by the petitioner cannot be accepted. The writ petition is however disposed of with liberty to the petitioner to approach the Vice-Chancellor who may sympathetically consider the reallocation in case it is possible in view of the fact that the petitioner's brother is also studying at Malappuram.