

**(2009) 07 AHC CK 0167**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 16140 of 2009

Adesh Kumar Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

---

**Date of Decision :** 24-07-2009

**Acts Referred:**

**Citation :** (2009) 07 AHC CK 0167

**Hon'ble Judges :** Dilip Gupta, J

**Final Decision :** Dismissed

---

## **Judgement**

Dilip Gupta, J.—The petitioner has sought the quashing of the order dated 24th September, 2008 by which his admission in Cutting and Tailoring Trade for the year 200809 in the Advanced Training Institute, Udyog Nagar, Kanpur (hereinafter referred to as the "Institute") was cancelled.

2. It is stated that the petitioner had submitted an application seeking admission to the aforesaid technical course in the Institute for the academic year 200809. The petitioner was called for interview on 25th August, 2008 and was ultimately selected for the training. However, on 5th September, 2009, the petitioner was informed that he should not attend the training as his merit had been wrongly calculated.

3. Feeling aggrieved, the petitioner approached this Court by filing Writ Petition No. 48180 of 2008 which was disposed of by judgment and order dated 15th September, 2008 with a direction that the Institute shall permit the petitioner to attend his classes and in case there is any discrepancy, the Institute shall be free to pass an order in writing after affording opportunity to the petitioner. The Court made it clear that the said permission was granted to the petitioner subject to the decision to be taken by the Institute.

4. The petitioner sent a copy of the order to the Institute and it is the case of the Institute that the petitioner was subsequently called and explained why his admission was cancelled and the letter containing the reasons was also sought to

be served upon him but as he refused to receive it, another letter was sent by Registered Post on 10th October, 2008 enclosing the earlier letter which he refused to take.

The reasons given in the letter for cancellation of his admission are as follows:

"(1) Your High School Marks is only 46.82% as per your High School Marks sheet, whereas due to clerical mistake it has been calculated as 96.83%, due to which your qualifying marks became 69.13% in place of your actual qualifying marks which is only 46.47%, so your position in merit comes far below that of the last candidate admitted in the general category. It is brought to your notice that last candidate who was admitted in the general category is possessing qualifying marks of 68.2%.

(2) In your Application form you are showing your experience from 21.3.2005 to 4.6.2008 which is over lapping with the period in which you completed your Intermediate qualification as a regular candidate from 2005 to 2007 as per your Intermediate certificate. It clearly shows that your experience certificate is false.

(3) It is also brought to your notice that it is clearly mentioned in our call letter that if any discrepancy in qualifying mark is found at the time of admission, your merit may change accordingly and you may or may not be selected for the admission.

(4) At the time of admission merit list was shown to you while verifying your documents but in spite of knowing that your High school marks is wrongly entered, you did not inform or brought it to the notice of admission committee.

(5) Your admission fees will be returned to you in case you apply for it."

5. Learned counsel for the petitioner submitted that the petitioner is not responsible for the wrong calculation of the High School percentage by the Institute and so his admission cannot be cancelled. In support of his contention he has placed reliance upon the decisions of the Supreme Court in *Shri Krishan v. Kurukshetra University, Kurukshetra*, AIR 1976 SC 276 and *Sanatan Gauda v. Berhampur University and others*, AIR 1990 SC 1075 and of Orissa High Court in *Naba Kishore Gadapalla v. Utkal University*, AIR 1978 Ori 65.

6. Sri Ajay Bhanot, learned counsel for respondent Nos. 2 and 3 has, however, submitted that the admission of the petitioner was cancelled within a week of his taking admission on the ground that while preparing the merit list, his High School marks were wrongly treated as 96.83% though he had actually obtained only 46.82% marks. He further stated that on the basis of the actual percentage of High School marks, his qualifying marks would be reduced to 46.47% as against 69.13% which was calculated on the basis that he had obtained 96.83% marks in High School. He further pointed out that the last candidate in the general category, to which the petitioner belongs, secured 68.2% marks. He has, therefore, submitted that admission of the petitioner was rightly cancelled and the plea of estoppel cannot come to his aid.

7. I have carefully considered the submissions advanced by the learned counsel for the parties.

8. The petitioner does not dispute that he had obtained only 46.82% marks at the High School examination and nor does he dispute the factual position that on the basis of the High School marks, his qualifying marks would be reduced to 46.47% from 69.13%, which percentage is much less than 68.2% which was obtained by the last admitted candidate of the category to which the petitioner belongs. However, what is contended is that the merit list was prepared by the Institute itself in which his qualifying marks was shown as 69.13% and so the admission of the petitioner cannot be cancelled subsequently because the petitioner is not at fault.

9. Admission was granted to the petitioner by mistake treating his qualifying marks as 69.13% instead of 46.47%, but it was cancelled within a week as soon as the correct facts came to the knowledge of the Institute. It is not a case where the petitioner was permitted to study for a long period and at the fag end of the course, he was told that his admission was bad. The petitioner cannot take aid of the plea of estoppel in such circumstances.

10. In this connection, reference may be made to the decision of a Division Bench of this Court in Special Appeal No. 498 of 2003 (Bhaskar Tiwari v. Vice-Chancellor U.P. Technical University and others) decided on 11th October, 2004 wherein a similar controversy came up for consideration. The admission of the petitioner had been cancelled on the ground that he had not obtained 50% marks in aggregate in Physics, Chemistry and Mathematics and, therefore, could not be considered for admission in the Institute but he was wrongly admitted by the Institute. The Court held that the Institute was justified in cancelling the admission and the plea of estoppel was not available to the petitioner in such a case.

11. The petitioner has relief upon the decision of the Supreme Court in Shri Krishan (supra). This decision does not help the petitioner as it was rendered on the basis of the Ordinances of the Kurukshetra University. In fact, a Division Bench of this Court in Kedar Lal Verma v. Secretary, Board of High School and Intermediate Education and another, AIR 1980 All 32 examined and distinguished this decision holding that:

"One of the pleas raised in defence by the University was that as the attendance of the appellant was short of the requisite percentage in LL.B. Part I, he could not insist on being admitted to Part II Examination. The Supreme Court did not accept the plea taken by the Kurukshetra University. It held that under the Statute, the University could withdraw the candidature of the petitioner for the LL.B. Part I Examination before the examination. Since this had not been done and the appellant was allowed to appear in the examination, rightly or wrongly, then the Statute which empowers the University to withdraw the candidature of the appellant had worked itself out and the appellant could not be refused

admission subsequently nor any infirmity which should have been looked into before giving the appellant permission to appear.

It would be found that the judgment of the Supreme Court turned on its own facts. In that case the Kurukshetra University did not have power to withdraw the candidature, hence the view taken in the said case is of no assistance to the petitioner in the present case....."

(emphasis supplied)

12. The petitioner has also relied, upon the decision of the Supreme Court in "Sanatan Gaucfa (supra). In this case the mistake was detected when the petitioner was in the third year of the law course. It is in such circumstances that the Supreme Court granted relief to the petitioner. In the present case, the admission was cancelled within a week of the admission. This decision, therefore, also does not help the petitioner.

13. Learned counsel for the petitioner has also relied upon the decision of Orissa High Court in Naba Kishore Gadapalla (supra). The Orissa High Court had relied upon the decision of the Allahabad High Court in Anil Kumar Srivastava v. University of Allahabad, AIR 1973 All 442. A Division Bench of this Court in Satish Kumar Rao and others v. Gorakhpur University, AIR 1981 All 377 examined the decision rendered in Anil Kumar Srivastava (supra) and found that the question of estoppel had infact been left open in the Special Appeal filed against the said judgment and the relevant observations are:

"In Anil Kumar Srivastava's case, which is the decision followed in the subsequent two judgments, mentioned above. Anil Kumar Srivastava, the petitioner of that case, appeared at the M.Sc. Previous (Maths) examination. On the strength of the mark sheet of M.Sc. Previous, Anil Kumar Srivastava joined M.Sc. Final. Only a couple of days before the commencement of the final examination, the petitioner of that case was informed that he had been debarred from appearing at the examination because he had failed to pass the M.Sc. Previous examination. Anil Kumar Srivastava filed a writ petition. Hon'ble H.N. Seth, J. allowed the writ petition and directed the University to declare his result. The learned single Judge held that in view of the fact that the University authorities had issued the final mark sheet showing that the petitioner had passed the M.Sc. Previous, the University was estopped from restraining Anil Kumar Srivastava from appearing at the final examination. The learned single Judge also held that Section 115 of the Evidence Act was applicable to the facts of the case. Against the said judgment, an appeal was filed by the Allahabad University, which was Special Appeal No. 65 of 1973, University of Allahabad v. Anil Kumar Srivastava. The appeal was decided on 18/4/1973 by a Bench consisting of Hon'ble Satish Chandra, J. (as he then was) and Hon'ble N.D. Ojha, J. The Division Bench maintained the judgment of the learned single Judge by confining it only to the point of opportunity. The view taken was that the Allahabad University could not cancel M.Sc. Previous result of Anil Kumar

Srivastava without giving an opportunity to him. The Bench held that unilateral decision of the University was in violation of the principles of natural justice which were attracted to the case because Anil Kumar Srivastava had acquired a right to appear at the M.Sc. Final examination. On the question of estoppel, that is, Section 115 of the Evidence Act, the Division Bench observed:

"The learned single Judge held that the University authorities were estopped. According to him, Section 115, Evidence Act, was applicable. In the view of the matter that we have taken, it is unnecessary to decide this point, we leave the question of the applicability of the doctrine of estoppel to the University open."

From the above decision, it would appear that the question of estoppel decided by the learned single Judge was left open, and as such, the decision of the learned Single Judge on that point could not be said to have been approved. The decision of the learned single Judge could not be considered to be an authority on the question of applicability of Section 115 of the Evidence Act or that of the doctrine of estoppel. In the two decisions, mentioned above, both the Division Benches heavily relied upon the judgment of the learned single Judge given in *Anil Kumar Srivastava v. Allahabad University*, AIR 1973 All. 442 (supra).

14. This decision, therefore, also does not help the petitioner.

15. Thus, for all the reasons indicated above, there is no merit in this petition. It is, accordingly, dismissed.