

(2009) 03 AHC CK 0173
In the Allahabad High Court

Ajay Kumar Srivastava

APPELLANT

Vs

Deen Dayal Upadhyay, Gorakhpur University and Others

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 03 AHC CK 0173

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Tarun Agarwala, J.—The petitioner is a student and is pursuing his studies in the Science stream, having passed the High School examination in first division in Science, and the Intermediate examination in second division. The petitioner graduated from Baba Raghav Das Post Graduate College, Deoria in second Division. On 29.8.2006, a news item was published in the daily Hindi Newspaper "Dainik Jagran" inviting admission in M.Sc. First Year, in Physics, in Mahatma Gandhi Post Graduate College. Based on this news item, the petitioner applied for admission in M.Sc. First Year, which was duly granted by the said College. Admission fee of Rs. 15,650/- was duly paid by the petitioner. The College issued an identity card and, the petitioner thereafter started attending the classes. In January, 2007, the petitioner was asked to deposit the examination form, which he duly deposited after filling it up. The examination of the First Year was to commence on 4.6.2007 as per the schedule published by the University. On 18.5.2007, the College authorities informed that he cannot appear in the examination since the College was not granted the affiliation in M.Sc. Physics by the University and offered to refund the fee paid by the petitioner. The petitioner was shocked and made a representation to the Vice Chancellor requesting that he should be permitted to pursue his studies either from the University or from some other college which was affiliated to the University, and which was authorised to run the M.Sc. course in Physics, so that the petitioner may not lose a year. When no response came from the University, the petitioner filed the

present writ petition. The Court, after considering the facts and the circumstances of the case, that had been brought on the record, passed an interim order dated 1.6.2007 directing the University to provisionally permit the petitioner to take his examination in M.Sc. First Year, in Physics. The Court, further directed that the result would not be declared till further orders of the Court.

2. This matter lingered on and inspite of notices being issued, the College, respondent No. 2, and its Principal, the respondent No. 3, did not file any counter affidavit and, eventually, by an order dated 27.1.2009, the Court directed that the filing of the counter affidavit would be subject to the imposition of cost which the Court would decide. Pursuant to the said order, a counter affidavit of respondent Nos. 2, 3 and 6 was filed. The University had earlier filed a counter affidavit.

3. The petitioner has appeared in person and he has been heard at length and submitted that the College has played a fraud in publishing incorrect information in the newspaper, and in inviting applications from the students for admission, in M.Sc. Physics, when infact the College had not been granted an affiliation to run the said course by the University. The petitioner submitted that he should not be made to suffer for the fraud played by the College .

4. The University, in the counter affidavit, has come out with a clear stand, namely, that the College was not granted an affiliation to run the course in M.Sc. Physics and therefore, the admission made by the College was totally illegal and was done at the risk and peril of the College itself, for which they alone are to be blamed. Since the college was not affiliated, the University could not permit the College to run the said course for the year 2006-07 nor could it allow the student, namely, the petitioner, to appear in the examination since the College was not affiliated to it.

5. The Principal of the College has filed a counter affidavit and has tried to explain the reason , which led to the publication of the news item inviting applications from bonafide students for the M.Sc. Course, in Physics, and submitted that under a bonafide impression that the affiliation was round the corner and was going to be granted in the shorted possible time, and in order to avail the academic session 2006-07, an advertisement/news item was issued in the newspaper inviting applications for admissions in M.Sc. Physics.

6. The counter affidavit of the college reveals that an application was moved in April 2005 before the Registrar of the University for starting a Post Graduate class in Physics and Mathematics. This application was forwarded by the University to the State Government for obtaining a no objection certificate/ clearance certificate. The State Government, by a letter dated 13.9.2005, intimated the College about the shortcomings which was removed and the requisite documents were again submitted to the University and, eventually, the State Government, by its letter dated 27.6.2006, granted clearance/no objection

certificate with regard to the opening of the Post Graduate course in Mathematics and Physics, in the College concerned.

7. Based on this no objection/clearance certificate being granted by the State Government, an inspection was made by a panel which recommended that the College be granted an affiliation with the University. Following this inspection, it is alleged that an F.D.R. was also filed by the College in the name of the University vide a letter dated 26.7.2006 and, thereafter, a formal letter of affiliation was required to be issued. Pending such grant of affiliation, the news item was published bonafidely inviting applications from students. However, the affiliation was not given. It has come on record that the University, eventually granted an affiliation on 16.7.2008 permitting the College to run the M.Sc. course, in Physic, from the Session 2008-09 onwards for a period of two years.

8. The learned Counsel for the petitioner also submitted that the delay in filing the counter affidavit was on account of the demise of the wife of the Manager of the College and, thereafter, on account of a heart problem of the Manager himself, which resulted in the delay in the filing of the counter affidavit.

9. Having heard the petitioner in person, the learned Counsel for the University and the learned Counsel for the College it is clear that the University has played a fraud in inviting application for admission in M.Sc. Physics, when in fact the College was not granted an affiliation by the University. The College has tried to show his bonafides by stating that all formalities had been completed and only the ministerial task of the issuance of the affiliation was left, and in anticipation of that issuance, of the affiliation letter, the College had bonafidely issued the advertisement/news item inviting applications for admission. It has also been stated that the petitioner was informed in January, 2007 for the refund of the fee when the affiliation did not come through. It is also alleged that the petitioner refused to accept the refund of the fee, which eventually resulted in filing of the present writ petition.

10. The stand of the College does not appear to be correct or bonafide. If the affiliation had not been granted to the College, the College should have cancelled the admission of the petitioner, which they failed to do so and allowed the petitioner to continue with his studies in its College. The plea that the petitioner was informed orally about the refund by the College, appears to be an afterthought. It appears that there was some other reason for permitting the petitioner to continue with his studies in the College which has not been stated in the counter affidavit. Since the College was not affiliated to run the M.Sc. course in Physics, the University was justified in not permitting the petitioner to appear in the examination. However, from 2006-07 session, the matter has now remained pending and the session 2008-09 is also coming to an end. Two academic sessions has gone by since the passing of the interim order. Two academic sessions has already been lost by the petitioner and the result of his First Year examination in M.Sc. Physics, which he had given in January, 2007 is yet to be declared.

11. The Court further finds that there is a delay in filing the counter affidavit by the College. The explanation given by the College regarding delay in filing the counter affidavit is vague and an afterthought. The mere fact that the wife of the Manager died and thereafter he became unwell does not justify the College authorities in not deputing its Principal or some other officer to file the counter affidavit. In fact, the counter affidavit, has been sworn by the Principal and not by the Manager.

12. In view of the aforesaid, in order to balance the equity and the law, the Court finds that it is a fit case to exercise its plenary powers under Article 226 of the Constitution of India. However, the directions given hereunder will not be treated as a precedent and will be confined to the peculiar facts and the circumstances of the case.

13. Admittedly, the petitioner was permitted to appear in M.Sc. First Year, in Physics examinations, by an interim order dated 1.6.2007. He has given the examination but, his results have not as yet been declared. During the pendency of the writ petition, the University, by its order dated 16.7.2008 has granted the affiliation to the said College to run the M.Sc. course, in Physics, from 2008-09 onwards for a period of two years. Consequently, this Court disposes of the petition with the following directions:

(1) Deen Dayal Upadhyay, Gorakhpur University is directed to declare the result of the examination given by the petitioner, in M.Sc. Physics, First Year, within four weeks from today. In the event, the petitioner passes his examination, he would be given admission by the College for the academic session 2009-10 and the petitioner would be permitted to pursue his studies as a regular student of that College.

(2) On account of the misrepresentation made by the Mahatma Gandhi, Post Graduate College, Gorakhpur, and for the delay in filing the counter affidavit, and the loss of two years, which the petitioner has undergone while pursuing the litigation, the Court imposes an exemplary cost of Rs. One lac to be paid by the College to the petitioner within four weeks from today by means of a crossed demand draft in favour of the petitioner.

14. A certified copy of this order shall be made available to the learned Counsel for the parties on payment of usual charges with four weeks from today.