

(2010) 07 AHC CK 0219

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 677, 17311, 4192 and 15915 of 2010 and 62549 of 2009

Amrit Bhushan Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0219

Hon'ble Judges : V.K.Shukla, J

Final Decision : Allowed

Judgement

V.K. Shukla, J.

1. In this bunch of writ petitions, petitioners have approach this court requesting therein to admit and grant admission to petitioners in B.Ed. Course and further writ in the nature of mandamus be issued by awarding compensation in favour of the petitioners.

2. Brief background of the case is that State Government authorized Dr. B.R. Ambedkar University, Agra to conduct Joint Entrance Examination for B.Ed. Course, 20082009. Pursuant to the said authorization given by the State Government, Dr. B.R. Ambedkar University, Agra on 20.8.2008 issued advertisement for holding of combined examination. A corrigendum was also issued again on 13.9.2008 wherein date of joint entrance examination was fixed for 19.10.2008. Each one of the petitioners claim that they undertook aforementioned joint entrance test on 19.10.2008 and thereafter, result of aforementioned examination was declared and said result was pasted on official website of Dr. B.R. Ambedkar University, Agra. Deen Dayal Upadhyay Gorakhpur University, Gorakhpur was assigned as counseling center to all the petitioners and said University in its turn enabled the petitioners to complete their admission formalities as per their rank from the list of the colleges shown by the authorities. Each and every information of the counseling i.e. center of the counseling, date and admission for counseling was available on the website of Dr.

B.R. Ambedkar University, Agra. Petitioners appeared at Deen Dayal Upadhyay Gorakhpur University, Gorakhpur for counseling and out of 30 colleges available on the website, Serial No. 1 to 27 were affiliated with Deen Dayal Upadhyay Gorakhpur University, Gorakhpur, while colleges of Serial No. 28 to 30 were affiliated with Veer Bahadur Singh Purvanchal University, Jaunpur. Petitioners deposited requisite counseling fee of Rs. 500/ with the counseling centre whereupon registration slip was issued in favour of each one of the petitioner. Petitioners of Civil Misc. Writ Petition No. 677 of 2010, Writ Petition No. 62549 of 2009, Writ Petition No. 17311 of 2010 and Writ Petition No. 15915 of 2010 gave choice for Dulari Devi Degree College, Bhikhampur, District Deoria, whereas petitioners of Civil Misc. Writ Petition No. 4192 of 2010 gave choice for Lal Bahadur Shastri Smarak Post Graduate college, Anand Nagar, Mahrajganj. Petitioners were allocated institution of their choice and they got admission by provisional allotment of seats and petitioners were asked to report to their respective colleges by 27.4.2009 for admission, failing which provisional allotment of seat was to be considered as cancelled. Petitioners claim that within the time frame provided for, they approached their respective institution, joined the same and they have been attending the college and perused the course regularly. Petitioners while pursuing their study, acquired knowledge that institution in question had no authority to take admission of B.Ed. Course for the academic year 20082009 and in view of absence of recognition by N.C.T.E. under N.C.T.E. Act, 1993 their pursuing of studies in the institution in question is of no consequence. In this background complaining that it is matter of public fraud by statutory body, as in spite of fact that institution was not at all accorded recognition by N.C.T.E., said institutions were shown in the list of the institution wherein admissions were to be offered through State Sponsored Joint Entrance Examination of B.Ed. and in unrecognized colleges, petitioners have been sent for admission and in such a situation request had been made for justice being done by according relief as has been claimed in the bunch of writ petitions. At this juncture with the prayer mentioned above, present bunch of writ petitions have been filed.

3. In respect of stand taken by the University, qua Dulari Devi Degree College, Bhikhampur, District Deoria, counter affidavit has been filed on behalf of the Deen Dayal Upadhyay Gorakhpur University, Gorakhpur and therein, it has been stated that said institution moved an application for grant of recognition for B.Ed. Course and submitted application form to N.C.T.E. for the year 2006. Communication dated 30.11.2006 was received from N.C.T.E. addressed to Education Secretary, Government of U.P. Lucknow and Department of Higher Education wherein request was made that recommendation of the State Government may be furnished to the Regional Committee within stipulated period. The Manager of the institution on 25.8.2009 sent a letter mentioning therein that college has received recognition from the N.C.T.E. for B.Ed course vide communication dated 16.8.2007 and the college has issued advertisement for appointment of Lecturer and Head of the Department and University may

nominate subject expert to facilitate appointment of Head of the Department and teachers in the subject. By another communication dated 25.8.2007 Manager of the institution requested that since it has got recognition from N.C.T.E. for conducting B.Ed. Course for 100 intake vide communication dated 16.8.2007 as such an inspection team be constituted for making on the spot inspection of the institution for grant of affiliation. On 6.9.2007 the Manager of the institution requested the Vice Chancellor of the University to nominate the subject expert for B.Ed course as the advertisement of teachers had already been published. The University, on 15.9.2007 nominated the subject expert for B.Ed. Course. The Registrar of the University on 28.9.2007 asked the Inspection team constituted by the Vice Chancellor of the University to submit report after inspection of the institution. On 28.9.2007 the Registrar of the University also informed the Manager that appointment of teachers have been approved. State Government accorded temporary affiliation under Section 37(2) of the Act for a period of one year w.e.f. 1.7.2007. The manager of the institution on 24.12.2007 informed the Registrar that teachers have been appointed in B.Ed. Department according to the norms and the appointment of the Head of the Department would be finalized within a period of one month and it was requested that the permission to run classes be given. University vide communication dated 24.12.2007 gave permission to the institution to run classes in the B.Ed. Course by taking admission of the students from the Joint entrance examination conducted in the State of U.P. It was categorically stated that the conditions as mentioned in the communication dated 20.12.2007 sent by the State Government is to be fulfilled by the institution, otherwise the affiliation of the college would be revoked. Later of the appointment of the Head of the Department was approved by the Vice Chancellor of the University in pursuance to the recommendation of the Selection Committee dated 6.3.2008. Manager of the institution on 23.7.2008 requested for constitution of the inspection team for grant of permanent affiliation in B.Ed. Course. Inspection team was constituted by the Vice Chancellor in accordance with the Government Orders dated 27.10.2002 and 21.10.2005. Thereafter, Registrar of the University vide communication dated 11.8.2008 directed the member of the inspection team to give report after on the spot inspection of the institution. Thereafter, permanent affiliation was accorded by the State Government vide order dated 8.12.2008. Subsequent to the same it was informed that information regarding recognition is not being shown on the Internet and in such a situation it was resolved to get information regarding recognition through special messenger from the Northern Regional Office of N.C.T.E., Jaipur. While said exercised was on going, Manager of the college produced photo copy of the letter dated 9.11.2009 in the office of the University on 25.11.2009. Said letter was sent to the counsel for the University, and the same was filed alongwith short counter affidavit on 26.11.2009. The genuinty of the said document was inquired through counsel for the N.C.T.E. who after obtaining, inspection informed that document dated 9.11.2009 is a forged documents. Thereafter, manager was asked to show cause qua his conduct. Not only this Manager filed affidavit on 18.1.2010 wherein he has reiterated that the

college had been accorded recognition from N.C.T.E. for conducting B.Ed. Course from the academic Session 20072008 vide letter dated 16.8.2007 and as such the admission taken by the college for the academic session 20072008 is completely legal. Thereafter, details have been given qua the action taken by the University against the Management of the University.

4. In respect of Lal Bahadur Shastri Smarak (P.G.) College, Anand Nagar, Mahrajganj, University has taken stand, that the Manager of the institution, addressed letter dated 14.6.2007 to the Registrar informing that NCTE has accorded recognition on 11.6.2007 to the institution for starting B.Ed. course after required formalities for the purpose, as such inspection panel be constituted. Pursuant thereto inspection panel was constituted vide letter dated 27.6.2007; said panel gave report, recommending for temporary affiliation. Appointment of teachers was approved on 28.8.2007. Temporary affiliation was granted by State Government on 19.11. 2007. Further request was made on 14.5.2008, by the Manager, that inspection panel may be constituted for grant of permanent affiliation; as period of affiliation would expire on 30.6.2008. Accordingly inspection panel was constituted vide letter dated 28.7.2008. Inspection was carried out, report was submitted. The Manager, alongwith inspection report, filed notary affidavit, that college had been accorded recognition from NCTE w.e.f. 20072008 academic session, and all formalities for permanent affiliation stands fulfilled. Said papers were forwarded to the State Government, and permanent affiliation was accorded on 30.12.2008, w.e.f. 1.7.2008, in exercise of authority vested under Section 37(2) of U.P. State Universities Act, 1973. The Registrar of the University on 28.2.2009 granted permission to conduct classes for B.Ed. Course subject to condition mentioned in letter dated 30.12.2008. On 22.7.2009, communication was received wherein it was mentioned that institution was issued letter of intent prior to recognition on 11.6.2007, and as reply had not been submitted qua fulfillment of terms and conditions, in term of Section 14(1) order of refusal was passed. Against the same appeal has been filed, in term of Section 18 of NCTE Act, same has been allowed on 11.9.2009 and matter has been remanded back for examination of staff profile and for passing of appropriate orders. Details have been given of issuance of show cause notice, and the reply submitted, and the reiteration of the fact that NCTE had accorded recognition on 11.6.2007, and there is no illegality in taking of admission. Pursuant to remand order dated 11.9.2009, again refusal order was passed refusing recognition, and against the same Appeal had again been filed. Thereafter, details have been furnished that affiliation has been obtained by concealment of material facts. Thereafter, reference of allowing of Appeal has been given, with direction to NCTE to issue formal recognition order, in continuation of conditional recognition order.

5. Counter affidavit filed on behalf of the Dr. Bhim Rao Ambedkar University, Agra wherein it has been mentioned that common entrance test for B.Ed. Session 20082009 was conducted by Dr. B.R. Ambedkar University, Agra. All the Universities of the State of U.P. submitted the list of their affiliated colleges to Dr.

Bhim Rao Ambedkar University, Agra, as such all those colleges were included in B.Ed. Counseling for the academic session 20082009, whose name was found place in the list of the University. Annexure CAI and CAII have been appended to show and substantiate that institution in question wherein petitioners had been accorded admission was forwarded by the University.

6. Counter affidavit has been filed on behalf of the institution also and therein details have been given and the way and manner in which permanent affiliation have been accorded. Further it has been stated that recognition is there, as order dated 16.8.2007 has been passed in term of Regulation 7(11) of the N.C.T.E. Act and further N.C.T.E. treated the colleges as recognised college, as was reflected from the relevant extract of the list of the recognised college, as on 20.10.2007 and in such a situation it has been sought to be stated that there is no deliberate act on the part of the college. It has been stated that recognition for academic session 20092010 has been accorded and request has already been made to grant recognition for academic session 20082009.

7. N.C.T.E. has also filed counter affidavit clearly stating therein that recognition had never been accorded and it was merely letter of intent and nothing beyond the same further retrospective recognition cannot be accorded.

8. Management of Dulari Devi Degree College, Deoria filed affidavit, to show and substantiate that entire action had been bonafidely undertaken, and there has been no fraud or mis representation on the part of Management concerned.

9. Manager has also filed affidavit in Civil Misc. Writ Petition No. 4192 of 2010 and therein it has been stated that appeal was filed against the said order and said appeal had been allowed and order dated 11.12.2009 has been reversed and orders have been passed to issue formal recognition order in continuation of the conditional recognition order. As far as institution of Lal Bahadur Shastri Smarak Post Graduate College, Anand Nagar, Mahrajganj is concerned it has to be accepted recognised institution and in view of this request examination can be conducted by the University of the students.

10. Apart from the aforementioned pleadings, pleadings in the shape of supplementary affidavit, supplementary counter affidavit and rejoinder affidavit are also available on record alongwith other affidavits and thereafter with the consent of the parties, present writ petition is being heard and finally decided.

11. Sri Ashok Khare, Senior Advocate appearing with Sri Sidharth Khare, Advocate contended with vehemence that in the present case students are not at all at fault and as such adequate compensation be awarded to each one of the student and further each one of the student is not at all back door entry, rather they are victim of fraud and manipulation made by the college in collusion with State and University authorities as without verifying this fact as to whether said institution had been accorded recognition by N.T.C.E. as is provided under N.C.T.E. Act, 1993 and Regulations framed thereunder or not, said institutions were shown in the list of recognised affiliated institution and petitioners were

accorded admission and as such requisite orders be passed to the save career of the petitioners by according admission in some other recognised institution or by passing any other suitable order. In respect of Lal Bahadur Shastri Smarak (P.G.) College, it has been additionally canvassed that it can be treated as recognised institution. Arguments to the similar effect have been advanced by Sri J.J. Muneer, Advocate, Sri V.R. Tiwari, Advocate and Sri S.K. Dwivedi, Advocate.

12. Countering the said submission, Sri G.K. Singh, Advocate appearing in Civil Misc. Writ Petition No. 17311 of 2010, Civil Misc. Writ Petition No. 677 of 2010, Civil Misc. Writ Petition No. 4192 of 2010, Civil Misc. Writ Petition No. 15915 of 2010 and Civil Misc. Writ Petition No. 62549 of 2009 on the other hand contended that as far as institution in question is concerned, there is no fraud and manipulation on the part of the institution and under bonafide believe admissions have been accorded and all positive efforts have been taken by them, as such requisite relief be refused in the present case.

13. Sri. Suresh Chandra Dwivedi, Advocate appearing for Management in Civil Misc. Writ Petition No. 4192 of 2010 on the other hand contended that once appeal has been allowed, institution has to be treated as recognised institution and as such there is no legal impediment to get examination held of the students of his institution in particulars.

14. Smt. Sunita Agarwal, Advocate on the other hand contended that in the present case inquiry has revealed that there is no formal recognition by the N.C.T.E. as per provision of N.C.T.E. Act, 1993 and the relevant regulations framed thereunder, in such a situation unrecognized institution could not have accorded admission and in fact University has been mislead by the Management and as such action is being taken against the erring management in accordance with law.

15. Sri. R.A. Akhtar, Advocate appearing on behalf of the N.C.T.,E. on the other hand contended that fact of the case clearly demonstrate that petitioners have been accorded admission in totally unrecognized institution as per parameter of N.C.T.E. Act, 1993 and regulations framed thereunder and qua unrecognized institution, no directives can be issued.

16. Standing Counsel has contended that State is not at all at fault and on the papers transmitted by University, action has been taken.

17. Shri Sanjai Singh, Advocate contended that University proceeded on the information furnished by Deen Dayal Upadhaya University, Gorakhpur and except for holding exams has no role to play.

18. After respective arguments have been advanced, undisputed factual position, on which there is no dispute that each one of the petitioner appeared in joint entrance test of B.Ed. course for academic session 20082009 conducted by Dr. Bhim Rao Ambedkar University, Agra, which was duly authorized by the State Government to hold and conduct such examination. Each one of the respective

University had sent list of the affiliated recognised institution to Dr. Bhim Rao Ambedkar University, Agra, qua which written test were to be conducted and Deen Dayal Upadhyay Gorakhpur University, Gorakhpur also sent list through Prof. S.N. Tripathi, who was incharge of B.Ed. entrance test examination on behalf of Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. List of 47 colleges was sent by the Deen Dayal Upadhyay Gorakhpur University, Gorakhpur and therein names of both the institutions were shown at serial No. 7 and 18 for including in B.Ed. Course for academic session 20082009. Petitioners qualified in written test and Deen Dayal Upadhyay Gorakhpur University, Gorakhpur was assigned as counseling centre and the list of the institution which was available for taking admission at the time of counseling, two institutions which are subject matter of dispute being also shown and petitioners as per merit status accepted the said institution and thereafter, have been accorded admission and have been pursuing their studies. Later on it has been revealed that said institutions are not at all recognised under N.C.T.E. Act. N.C.T.E. Act, 1993, as no formal order of recognition has been issued. With a view to achieve planned and coordinated development of the teacher education system in the whole of the country and for regularization and proper maintenance and the norms and standards in the teacher education system. N.C.T.E. Act, 1993 came into force on 1.7.1995 and Chapter IV of aforementioned Act deals with recognition of the institution offering course or training in teacher education. Relevant regulations are being extracted below:

14. Recognition of institutions offering course or training in teacher education.

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under sub section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under subsection (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may

be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in subclause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing: Provided that before passing an order under subclause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of

subsection (3).

(6) Every examining body shall, on receipt of the order under subsection (4),

(a) grant affiliation, to the institution, where recognition has been granted; or" (b) cancel the affiliation of the institution, where recognition has been refused.

15. Permission for a new course or training by recognised institution. (1) Where any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission there for to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

(2) The fees to be paid along with the application under sub section (1) shall be such as may be prescribed.

(3) On receipt of an application from an institution under sub section (1), and after obtaining from the recognised institution such other particulars as may be considered necessary, the Regional Committee shall,

(a) if it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory, and that it fulfils such other conditions required for proper conduct of the new course or training in teacher education, as may be determined by regulations, pass an order granting permission, subject to such conditions as may be determined by regulation; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in subclause (a), pass an order refusing permission to such institution, for reasons to be recorded in writing:

Provided that before passing an order refusing permission under subclause (b),

the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation.

(4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under subsection (3), shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority, the State Government and the Central Government.

16. Affiliating body to grant affiliation after recognition or permission by the Council. Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution, unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 or permission for a course or training under section 15.

In exercise of authority vested under Section 32(2) of the Act, 1993 regulations have been framed known as (National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2007. Relevant para 7,8 ,9 and 11 are being extracted below.

Regulation 7 Processing of Application.

(1)

(2)

(3)

(4)

(5)

(6)

7. The Regional Committee shall decide grant of recognition or permission to an institution only after satisfying itself that the institution fulfills all the conditions prescribed by the N.C.T.E. under the NCTE Act, Rules or Regulations, including interalia, the norms and standards laid down for the relevant teacher education programme/course.

(8) In the matter of grant of recognition, the Regional Committees shall strictly act within the ambit of the National Council for Teacher Education Act, 1993, the National Council for Teacher Education Rules, 1997 as amended from time to time and the regulations made under the NCTE Act, 1993 including the norms and standards for various teacher education programmes and shall not make any relaxation thereto. The Regional Director who is the convener of the Regional

Committee, while putting up the proposal to the Regional Committee, shall ensure that the correct provisions in the NCTE Act, Rules and Regulations including Norms and Standards for various teacher Education programmes are brought to the notice of the Regional Committee to enable the Regional Committee to take appropriate decisions.

(9) The institution concerned shall be informed, through a letter, of the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter issued under this clause shall not be notified in the Gazette. The faculty shall be appointed on the recommendations of the Selection Committee duly constituted as per the policy of the State Government/Central Government/University/UGC or the concerned affiliating body, as the case may be. The applicant institution shall submit an affidavit in the prescribed form that the Selection Committee has been constituted as stated above. A separate staff list with the details would be submitted in the Prescribed form. The Regional Committee would rely on the above affidavit and the staff list before processing the case for grant of formal recognition.

(11) The institution concerned, after appointing the requisite faculty staff as per Regulation 7(9) above and fulfilling the conditions under Regulation 7(10) above shall formally inform the Regional Committee concerned alongwith the requisite affidavit and staff list. The Regional Committee concerned shall then issue a formal recognition order that shall be notified as per provisions of the NCTE Act."

Regulation 8 Conditions for grant of recognition (12). An institution shall make admission only after it obtains order of recognition from the Regional Committee concerned under Regulation 7(11), and affiliation from the examining body.

20. On the parameter as provided under statutory provision holding the field of according recognition, as far as recognition by the NCTE is concerned, at no point of time, any formal letter of recognition under Clause 7(11) of the Act had ever been issued in favour of the institution in question namely Dulari Devi Degree College, Bindwaliya, Bhikhampur, Deoria. Letter, which has been made foundation and basis for according admission and for presuming that it is a letter of recognition is in fact only letter intent prior to recognition as per Clause 7(9) and at no point of time, any formal recognition order under Clause 7(11) had ever been issued. Letter dated 16.8.2007, of NCTE shows Dulari Devi Degree College, Bindwaliya Bhikampur, District Deoria at Serial No. 64, and item No. 3 clearly proceeds to mention that it is letter prior to recognition, and also clearly proceeds to pass prohibitory order, the institution shall not admit the students to the course, until it submits the compliance regarding the appointment of qualified teaching staff and until the unconditional recognition order under 7(12) of Regulation is issued to the institution. Before this Court, it has been submitted by the University, that Manager had made manipulations in the said letter by deleting the said conditions, whereas the original letter contained such condition. Enquiry against the Management is already on, and such this Court is not

expressing any opinion, but the fact of the matter is that in term of Clause 7(11) of Regulation, no formal order of recognition had ever been issued, then the institution in question by no stretch of imagination could be accepted to be recognized institution and could have proceeded to admit the students.

21. In respect of Lal Bahadur Shastri Smarak Post Graduate College, Anand Nagar, Mahrajganj, it has been sought to be contended that on account of allowing of appeal, institution in question has to be accepted as recognised institution. Appeal in question have been preferred against the decision dated 11/12.12.2009 refusing recognition for conducting B.Ed. Course, said appeal has been allowed and therein directions have been issued to issue formal recognition order in continuance of conditional recognition order within 15 days from the date of issue recognition order. Here also till date formal recognition in term of Clause 7(11) of the Regulation had never been issued and earlier recognition, which was accorded, it was merely letter of intent as is clearly reflected from condition No. 3, wherein it is clearly mentioned, it is letter of intent prior to recognition, and also further imposed prohibitory condition, that institution shall not admit to the course, until it submits the compliance regarding the appointment of qualified teachers and until unconditional recognition order is issued. Without there being any unconditional recognition order, in the teeth of prohibition imposed on 11.6.2007 and as such in between two institution, which are subject matter of issue in the present writ petition in pith and substance, there is no difference, as in both the cases, formal order of recognition had never been issued, at the point of time, when the admission had been accorded, and in breach of the prohibition imposed, admission to students have been accorded.

22. Once this is factual scenario, then net effect of the same is that both the institutions in question as per parameter of N.C.T.E. Act and relevant regulations have to be treated as unrecognized institution for the academic session 20082009, when petitioners have been accorded admission, and according of recognition for session 20092010 and allowing of appeal will not change the situation.

23. Hon''ble Apex Court in the case of CBSEVS Sunil Kumr AIR 1988 2235 has taken view that permitting students to unaffiliated institution to appear in the examination tantamount to sub version of law and this Court will not be justified to misplaced sympathy in favour of students. Said principle has been followed by Hon''ble Apex Court in the case of Sunil Oraon Vs. CBSE 2006 (13) SCC, 673 by mentioning that ultimate victim are students who are innocent , but same cannot be ground for granting relief to them. Hon''ble Apex Court following the same principles in the case of Director (Studies) Dr. Ambedkar Institute of Hotel Management Vs. Vaibhav Singh Chauhan, 2009(1) SCC 59, took the view in such matters, passing of interim orders cannot be approved of. Once petitioners have been accorded admission in unrecognized institution, then in such a situation qua the said two institution, Dulari Devi Degree College, Bhikampur, Deoria being accorded recognition for academic Session 20092010, and appeal of Lal Bahadur

Shastri Smarak (PG) College, Mahrajganj being allowed, no relief can be accorded to the petitioners to permit them to undertake examination from the said two institutions for academic session 20082009.

24. Section 16 of NCTE Act opens with onobstante clause and requires affiliating body to grant affiliation only after recognition or permission by the Council. In the present case, without there being any formal order of recognition been passed, University recommended for grant of affiliation to the State Government under Section 37(2) of U.P. State Universities Act 1973 and in mechanical manner, without verifying the factum of recognition, State Government in mechanical manner accorded affiliation. Obtaining of recognition by the Council was condition precedent before granting affiliation under Section 37(2) of U.P. state Universities Act, 1973.

25. However, in the facts of the present case, as petitioners have not manipulated anything and to the contrary record in question clearly reflects that under State Sponsored Test conducted by Dr. Bhim Rao Ambedkar University, Agra, petitioners appeared and thereafter were declared successful, and in the list of the college, which was admittedly supplied by the University for counseling they were accorded admission in the said respective institution. Here petitioners before this court are at not at all fault and they have been accorded admission in unrecognised institution of the NCTE for academic session 20082009, on account of there being gross negligence on the part of the Universityauthority/ State in not being vigilant words to their obligation, the institution in question succeeded in getting its name included in the list of recognised institution and thus perpetuated fraud on the students.

26. Fact of the matter is that petitioners are not at all fault and in this situation and in this background, as it has been found that both the institutions are unrecognized for the academic year 20082009, in such a situation this court directs management of both the institutions to return entire fees to the petitioners alongwith 9% simple interest within next one month from the date of production of certified copy of this order.

27. Compensation is also being accorded for the wrong which has been done on account of gross negligence on the part of the State Authority including University and on account of misrepresentation on the part of the institution concerned. One academic year of the students cannot be returned back. Compensation can always be awarded when there is infringement of States obligation, in proceedings under Article 226, bypassing the old doctrine of relegating aggrieved to the remedies available in civil law suits, and current judicial trend is to provide expeditious relief to an individual. Court of law cannot close its consciousness and aliveness to stark realities, by adopting justice oriented approach. In the facts of present case driving the students to civil court to contest litigation, when they are in such stage of career will not at all be appropriate, when either they should be in classroom or preparing themselves to settle them selves. In this background in order to bring their agony to an end, as

State Government/University, Deen Dayal Upadhaya, University Gorakhpur and respective institution all have contributed to such situation, compensation of Rs One lac is awarded to each student. Out of this one lac rupees fifty thousand each shall be paid to the student by the Management of the institution within two months from the date of judgment. Remaining fifty thousand amount shall be paid by State Government/ University in equal proportion, to the students concern within the same period as mentioned above. State Government/ University, would be entitled to recover the said amount, from its erring official/ employees after making due enquiry into the matter and after fixing due responsibility in accordance with law.

28. Petitioners at last contended that in the next academic session, as they are not at all at fault, in view of the judgment of Hon''ble Apex Court, in the case of Dally Chandra Vs. Chairman JEE 2004 AIR SCW 5699, directives be issued for giving admission. At this juncture, the view point of Hon''ble Apex Court in the case of Dally Chandra Vs. Chairman JEE 2004 AIR SCW 5699, is being looked into. Relevant para No. 10 and 11 are being extracted below.

10. The appellant had qualified in the JEE2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

11. The appeal is accordingly allowed with costs. The judgment and order dated 31102003 of the High Court is set aside. The respondents are directed to give admission to the appellant in any one of the State medical colleges forthwith. In case the State seats have already been filled up, one extra seat shall be created for her.

29. On the parameters as set out as petitioners had undertaken entrance test and admittedly have been accorded admission. Had State/University authority been vigilant, such situation would never have occurred and petitioners would not have been put in such great disadvantageous situation in such a situation and in this background, it is hereby directed that as academic session 20092010 has been declared to be zero session, in such a situation and in this background it is hereby directed that for academic session 20102011 State Government shall make arrangement of admission of these students in any affiliated college of Deen Dayal Upadhaya University, Gorakhpur without asking them to undertake any regular process of examination etc on the basis of their merit status in the earlier examination, preferably within period of next two months from the date of production of certified copy of this order. For this purpose State Government shall call for the list of private affiliated college, affiliated to Deen Dayal Upadhaya University, Gorakhpur, wherein B.Ed. course, approved by NCTE is imparted and in the said institution, students be distributed in equal proportion as per their merit status and choice.

30. With these observations, writ petitions are allowed.