

(2014) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 2572 and 2574 of 2014

Annie Institute of Technology and Research Centre

APPELLANT

Vs

Directorate of Technical Education

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Madhya Pradesh Niji Vishwa Vidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007
— Section 12

Citation : (2014) 53 MPLJ 659

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : Siddharth Gupta, A.P. Shroti and Anuj Agrawal, Advocate for the Appellant; P.K. Kaurav, Additional Advocate General, Advocate for the Respondent

Judgement

1. As common questions of law and fact are involved in both these petitions and both the Institute and the students are petitioners, in these two cases, they are being disposed of and decided by this common order. For the sake of convenience, pleadings and documents available in the record of Writ Petition No. 2572/2014 are being referred to in this order. Annie Institute of Technology and Research Centre situated in Village Thuniaband, Near Air Strip, Chhindwara is a Society registered under the M.P. Society Registrikaran Adhiniyam, 1973. It has established a Technical Education Institute for imparting various courses of study in B.E. and other Technical courses. For the purposes of starting the course, the Institute submitted an application in accordance to the Rules and Procedure laid down by the All India Council for Technical Education (hereinafter referred to as "AICTE"), after obtaining requisite approval and no objection certificate from the State Government and other authorities; scrutiny by the Scrutiny Committee; Inspection by AICTE, and all formalities were completed and thereafter it was found that the Institute does not meet the requirements as per the rules, various deficiencies were pointed out and, therefore, approval was not granted. Appeal was filed before the Appeals Committee, which was also dismissed by the Appeals Committee on 30-4-2013, and after the appeal was also dismissed

matter came to this Court at the instance of the petitioner/institute in Writ Petition No. 7066/2013. It was the grievance of the petitioner/Institute in this writ petition that the benefit of approval and recognition has been illegally denied without appreciating the documents and the facilities available, the action taken by the authorities including the Appeals Committee, is unsustainable. This Court went into various aspects of the matter and by an order passed on 27-6-2013, finding no case made out for interference with the decision of the Council and the Appeals Committee, dismissed the writ petition.

2. Challenging the aforesaid dismissal of the writ petition, the Institute in question filed a Special Leave Petition, which was granted and Civil Appeal No. 7787/2013 was registered before the Supreme Court. Hon"ble Supreme Court decided this Civil Appeal by an order passed on 3-9-2013, and before the Supreme Court it was pointed out that now no deficiencies were available and various documents were produced to say so. Keeping in view the aforesaid, the Supreme Court issued the following directions:

"....We are told by learned counsel appearing for the State of Madhya Pradesh that counselling for admissions in the Technical Institutions in the State of Madhya Pradesh are over on 15th August, 2013. Since the counselling in the State of Madhya Pradesh is over, the State of Madhya Pradesh will have to provide names of candidates from its merit list to the institution of the appellant for admission now that the institution will be recognized by the AICTE.

We, therefore, set aside the impugned judgment and order of the High Court and disposed of this appeal with the direction that the AICTE will grant recognition to the appellant forthwith (within 4 days) and the State of Madhya Pradesh will provide the list of candidates on the basis of merit list in accordance with the relevant rules for admission in the appellant's institution. It is made clear that the list of candidates for admission will be provided by the State only after the appellant receives the order of affiliation from the concerned affiliating University. The appellant will also ensure that the number of classes prescribed by the AICTE shall be completed in the Institution for its students during the academic session 2013-2014."

(Emphasis supplied)

It is stated that in pursuance to the aforesaid directions, AICTE granted recognition to the petitioner/Institute and thereafter certain process for counselling was also held and the proceedings of the College Level conducted is produced as Annexure P/13, to show that on 29-12-2013, the counselling was conducted in the presence of the representative of the State Government and 136 number of candidates, who were present at the time of counselling, were recommended for admission in various B.E. Courses. Out of these 138 candidates, students whose name appear in Annexure A, to the minutes of the counselling were approved for being granted admission in various branches, as are indicated in paragraph A of the minutes of the proceedings. With regard to

the remaining 68 students, based on certain remarks made in the remark column of Annexure B, it was held that they are not entitled for admission.

3. Shri Sidharth Gupta, learned counsel appearing for the Institute; Shri A.P. Shrotri and Shri Anuj Agrawal, learned counsel appearing for the students, point out that with regard to these 68 students, the dispute in these petitions have arisen. They point out that these 68 students have been denied admission on two grounds. One set of students have been denied admission on the ground that they have already taken admission on the basis of previous counselling held in certain Institutes and now, they cannot take admission again in this Institute. It was indicated to the Institute and to the students that their admission by transfer after counselling conducted earlier is not permissible. The second reason for denying admission to certain set of students was that they are only 12th pass with Physics, Chemistry and Mathematics as subjects and as they have not appeared in the Pre Engineering Test, they cannot be admitted.

4. Learned counsel for the petitioners invite our attention to the Admission Rules of 2008, formulated under section 12 of the Madhya Pradesh Niji Vyasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007; the amendment made in the Rules in the year 2010, and by referring to the provisions of the Rule, point out that both these objections raised are unsustainable. Referring to the procedure for admission as contained in Rule 7 and Clauses (6) to (9), Shri Sidharth Gupta points out that if a candidate has taken admission in an Institute on the basis of the first counselling, he is also entitled to appear in the next phase of counselling after getting his previous admission duly cancelled and in the subsequent round of counselling, he can get admission and seek change of his course based on the seats and the Institute available. However, it is indicated that once a candidate is admitted to a particular Institute through counselling, no transfer is permissible. It is emphasized by Shri Shrotri and Shri Sidharth Gupta that based on this if a second counselling is taking place, a student who has not received admission in his choice Institute or course is entitled to get his previous admission cancelled and seek admission afresh on the basis of the second counselling. That being so, learned counsel point out that most of the 68 students, who had taken admission based on the earlier counselling held, were residents of District Chhindwara and as no Engineering Institute was available in the District of Chhindwara, they were compelled to take admission in other Institutes, particularly in Bhopal and Jabalpur. Learned counsel for the petitioners referred to the list - Annexure B and point out that most of the students are local residents of District Chhindwara and surrounding villages, most of them belong to Scheduled Caste, Scheduled Tribe and Other Backward Caste category, and when an Institute in that District was functioning and admission was going on, they thought it appropriate to get their previous admission cancelled and seek admission in the new Institute. It is argued by learned counsel that when the Rules do permit this, the objection of the respondents in this regard is unsustainable. In support, learned counsel also placed reliance on the Online of Campus Counselling and the brochure for

admission and the note appended to the provision of College Level Counselling, to say that such a process is permissible. The Note in Hindi reads as under:

5. As far as the second set of students, who have not appeared in the Entrance Examination and are seeking admission, are concerned, learned counsel invites my attention to the admission brochure and the rules framed thereunder i.e. Rule 8 as amended in the year 2010, and point out that under this rule, if after counselling seats are available, then based on the marks received in the 10 + 2 Examination, students who have passed 12th Class Examination under 10 + 2 system of education with Physics, Chemistry and Mathematics, are entitled for seeking admission in the Institute in question. Accordingly, learned counsel argued that both the objections raised by the respondents are unsustainable.

6. Accordingly, learned counsel for the petitioners argued that once the admission in question was held in accordance to the list prepared, in a procedure formulated by the State Government after due approval of the competent authority, then the action now for debarring the 68 students from taking admission is unsustainable. Learned counsel, therefore, prays for interference into the matter.

7. Shri P.K. Kaurav, learned Additional Advocate General, refuted the aforesaid and argued that in the order passed by the Supreme Court and as reproduced hereinabove, the Supreme Court being conscious of the fact that the counselling for the State Government was already over on 15-8-2013, did not permit for any further counselling, but only directed the State Government to submit a list of candidates. Instead, it is stated that the petitioner/Institute conducted a College Level Counselling and selected the candidates, even though no such list was submitted by the State Government. It was emphasized that the procedure for admission of these students conducted is not in accordance to the mandate and the directions issued by the Supreme Court, no College Level Counselling was permitted and placing reliance on a judgment of the Supreme Court in the case of Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, , learned counsel emphasized that the only limited liberty granted by the Supreme Court in the matter of admission to the Institute in question was that based on the counselling done and the merit list available, the State Government will provide the list to the Institute and from the said list the students could be admitted. However, in this case as this procedure has not been followed, Shri Kaurav submits that the action taken is unsustainable and in denying admission to the 68 students as per Annexure B to the recommendation of the Counselling Committee - Annexure P/13 dated 29-12-2013, no error has been committed by the department.

8. It is also pertinent to note that after the admission process was concluded, as indicated hereinabove, the petitioner/Institute has been granted affiliation by the Rajeev Gandhi Proudhyogiki Vishwavidyalaya, M.P. (hereinafter referred to as "RGPVV") on 29-12-2013, vide Annexure P/8.

9. In sum and substance, the dispute now is only with regard to the 68 students, whose name appear in the list - Annexure B to Annexure P/15, who are denied admission on the objections as indicated, and the contention of the State Government that they were not in the list provided by the State Government.

10. We have considered the submissions made and as indicated hereinabove, and we propose to deal with the matter based on the observations and directions issued by the Supreme Court.

11. Even though on the face of it and at the first instance, the objection and submissions made by Shri P.K. Kaurav, learned Additional advocate, seems to be very attractive and could be accepted, but on bestowing out anxious considerations to the same in the backdrop of the totality of the facts and circumstances, we feel that the said contention is wholly misconceived.

12. If the directions issued by the Supreme Court, which is reproduced hereinabove, it would be seen that the Supreme Court left it to the State Government to provide names of candidates from its merit list to the Institute for making admission, subject to grant of recognition by the AICTE. The Council was directed to grant recognition within 4 days and the State Government was further directed to provide the list of candidates on the basis of the merit list in accordance with the relevant rules for admission, as may be applicable to the Institute. The All India Council for Technical Education granted recognition as is evident from Annexure P/6 dated 9-10-2013, and after this recognition was granted the Institute vide Annexure P/7 requested the Director of Technical Education to initiate the process for admission and also requested for affiliation from RGPVV. The RGPVV granted them affiliation vide Annexure P/8 on 29-12-2013. However, vide Annexure P/9, on 17-10-2013, the Institute had requested the Director of Technical Education and informed them that they acknowledge receipt of merit list of PET students. It was indicated that the particulars of the students are incomplete. A request was also made to provide the merit list of such candidates who have passed 10 + 2 Examination and who are eligible for admission. It seems that the Directorate of Technical Education made a communication vide Annexure P/10, on 25-10-2013, and indicated that the merit list is available with the Professional Examination Board, and provided list of certain candidates. Thereafter, the Directorate indicated in their letter that the process for admission can be initiated by publishing an advertisement in the Newspaper and by this process candidates, who have passed the Examination and who are eligible and who are desirous of seeking admission in your Institute, will appear. The Institute was also apprised of the fact that the course should commence immediately. The observations made by the Directorate in its letter - Annexure P/10, in Hindi, reads as under:--

(Emphasis supplied)

13. From the aforesaid narration of facts, it is clear that when the petitioner sought for the list of meritorious students as directed by the Supreme Court,

certain names were forwarded and thereafter the Institute was granted liberty to make admission by advertisement and call for willing candidates on the ground that the complete merit list is not available with the State Government and it is only available with the Professional Examination Board.

14. The Institute thereafter vide Annexure P/11, informed the Directorate that they propose to conduct the admission process and requested that a representative of the State Government or the Directorate be sent to supervise the admission process and various other aspects. The advertisement was also issued in the daily newspaper vide Annexure P/12 and based on the same it seems that the Directorate nominated one Shri Rohit Kumar Shah, Principal, Government Polytechnic College, Khirsadoh, as its representative along with one Professor P.C. Sethia, Director, AITRC, Chhindwara. The minutes of the admission proceedings which was termed as Counselling Committee's recommendations is available at Annexure P/13. It is seen that out of the list of 89 candidates provided by the State Government as per merit list, 68 candidates as per Annexure A were found eligible and they were recommended for admission. That apart, in the counselling or the admission process so conducted, 136 candidates appeared and the remaining candidates were such who had appeared in PET Examination and they were either granted admission in some other Institute or were candidates, who had passed 12th Class under the 10 + 2 Scheme of Education with Physics, Chemistry and Mathematics as subjects. The particulars of these students are available in the writ petition filed by these students i.e. Writ Petition No. 2574/2013, and the documents annexed by the students in these go to show that all of them appeared in the Examination conducted and had passed and were granted admission or their names were included in the list of candidates eligible for admission, but were not granted admission. It is, therefore, clear that these 68 students were not students who just came for admission because they saw the advertisement, but they were students who took admission in various Institutes either in Bhopal or Jabalpur or were eligible for seeking admission as they had passed the 12th Class Examination with Physics, Chemistry and Mathematics as subjects.

15. Now, the respondents are denying admission to these students on the two grounds as indicated in the remark column of Annexure B. In all, three grounds are canvassed. The first two grounds are that candidates who have sought admission in one Institute cannot be provided admission in another Institute, and further that candidates who have only passed 12th Examination with Physics, Chemistry and Mathematics as subjects, cannot be admitted as per Rules.

16. Both these contentions are misconceived and in the light of the rule position, as is indicated and pointed out to us by Shri Sidharth Gupta, there is nothing in the rules which prevent grant of admission on this ground. As indicated in the preceding paragraphs of this order, the rule position as indicated and told to us by Shri Sidharth Gupta does show that if a candidate has taken admission in one Institute and if counselling or admission process is again held in some other

Institute, the candidate has an option to get his admission cancelled and seek admission in the next Institute. Similarly, if the seats are left vacant, candidates who have passed the 12th Class Examinations with Physics, Chemistry and Mathematics can also seek admission. That being so, the reason given in the remark column of Annexure B, for refusing admission to this category of 68 students, who are petitioners in Writ Petition No. 2574/2014, is wholly unsustainable. The reason given in the remark column runs contrary to the rules and, therefore, on such consideration they cannot be denied admission. To that effect, we are unable to uphold the objection raised by the Directorate of Technical Education. In this regard, the relevant rules which permit 12th Class students with Physics, Chemistry and Mathematics as subjects, to be selected, may be referred to. The Admission Rules of 2008, which was originally notified on 15-4-2008, has been amended. The amendments have been made in Rule 8 sub-rules (1) and (2), vide Gazette Notification published in M.P. Rajpatra (Asadharan) dated 7-6-2010, and the amended sub-rule (2) now reads as under:

"(2) If seats remain vacant even after two rounds of counselling on the basis of merit of common entrance test, then remaining seats shall be filled through centralized counselling on the basis of marks obtained in the qualifying examination, if seats remain vacant even after this round then remaining seats shall be filled by college authorities in the presence of representative of competent authority according to the procedure notified by the competent authority."

If the aforesaid rule is taken note, it would be seen that based on the marks obtained in the qualifying examination i.e., 12th with Physics, Chemistry and Mathematics, a candidate is entitled to seek admission. That being so, under the Rules also, the contention and objections of the respondents seem to be incorrect.

17. As far as the third contention raised is concerned, the same is that admission was permissible only if the merit list was provided by the State Government.

18. A bare reading of the Hon'ble Supreme Court's order in the first instance does appear so, but thereafter the Supreme Court also says that the list for admission as per merit list may be provided by the State Government and admission conducted as per rules applicable. The narration of facts and the procedure followed for admission as indicated hereinabove will show that the Institute sought for list from the State Government and the State Government was not in a position to give a complete list, it gave only a part list and, therefore, when the Institute sought for further list of candidates vide Annexure P/10, on 25-10-2013, the State vide Directorate of Technical Education informed the Institute that they can advertise in the newspaper and call for candidates, who have already appeared in the Examination conducted and grant them admission. They were also informed about the fact that the complete merit list is not available with the State Government, it is only available with the Professional Examination Board and, therefore, the procedure for admission through

advertisement was recommended by the Directorate itself. Once the Directorate of Technical Education permitted this procedure to be followed and by following this procedure when advertisement was issued and when vide Annexure P/11, a representative of the Directorate was asked to be sent for participating in the process of admission and when the entire admission process on 29-12-2013 was conducted in the presence of this representative, the State Government cannot now turn around and say that the procedure for admission followed is contrary to the directions of the Supreme Court and, therefore, the State Government will not approve it.

19. We are of the considered view that the entire admission process was conducted in accordance to the guidelines, mandate, rules and procedure indicated by the State Government i.e. its Directorate of Technical Education, which permitted the petitioner Institute and the students to take admission and having nominated their representative to oversee the process of admission, cannot now take a somersault and come out with a case that in the case of 68 students the admission cannot be approved. It is clear that the entire process followed by the Institute as indicated hereinabove, was nothing but a procedure followed in consultation with and due approval of the Directorate of Technical Education and when the rules do permit admission of candidates whose name appear in Annexure B to Annexure P/13, we see no ground to deny admission to these students. It is the State Government, instead of providing a list of all the candidates as directed by the Supreme Court, permitted the Institute to follow a process, which was followed after due approval of the State Government, and also with the guidance and advice of the State Government in as much as the process for issuing advertisement was something which was indicated by the Directorate of Technical Education itself in its letter Annexure P/10, and the record of the same available in Writ Petition No. 2572/2014, does show that the students participated in the admission process on 29-12-2013, based on their merit and success in the entrance examination.

20. Taking note of all these factors, we are of the considered view that now causing prejudice to the interest of the students, who have taken admission, the State Government cannot backtrack from the procedure and point out procedural infirmity in the admission of the students and play with their career. If the list of students available in Writ Petition No. 2574/2014 and in Annexure B to Annexure P/14 is taken note of, it would that most of the students are candidates belonging to the Scheduled Caste, Scheduled Tribe and Other Backward Caste category, they are local residents of various places in the District of Chhindwara and when a new Technical Institute was established in their home District and admission to this Institute was in progress, the students were inclined to seek admission in this Institute and if for doing so, they were willing to cancel their admission in Institutes in which they were previously admitted in the District of Bhopal and Jabalpur, if we throw away the writ petition and uphold the contention of the State Government, it would be causing grave injustice to these students and their career would be adversely affected.

21. Taking note of all these circumstances and the interest of justice involved, we are of the considered view that the 68 students, who are petitioners in Writ Petition No. 2574/2014, have been rightly admitted to the Institute in question, and the action of the State Government in the Directorate of Technical Education, in denying admission to these students cannot be upheld by us.

22. Accordingly, taking note of the totality of the facts and circumstances of the case both these petitions are allowed. The impugned action of the State Government is quashed. The 68 students, who are petitioners in Writ Petition No. 2574/2014, and whose name appear in Annexure B to Annexure P/14, and who have been admitted to the Institute in question, their admission be regularized and they be permitted to prosecute their course in question in accordance with the rules. With the aforesaid, both the petitions stand allowed and disposed of.