

(2009) 09 AHC CK 0080
In the Allahabad High Court

Arun Kumar Misra and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Citation : (2009) 09 AHC CK 0080

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Chauhan, J.—Since the common question of facts and law are involved in these petitions, therefore, they are being heard together and decided by a common judgement.

2. The present petitions have been filed with the prayer that the petitioners may be permitted to participate in the examination on the basis of the admission held in pursuance to the Government Order dated 12.08.2008.

3. Submission of learned Counsel for the petitioners is that initially when the writ petitions were filed, an interim order was granted in favour of the college. Students of some of the institutions were allowed to appear in the examination on the basis of second counselling. On the date of filing of the petitions, three papers had taken place and this Court deemed it proper not to permit the petitioners to appear in the on going examination. Further submission is that the petitioners were admitted on the basis of the order passed by the Division Bench of this Court in Writ Petition No. 3 (M/B) of 2009 and other connected matters by the respective institutions. Learned Counsel for the petitioners has relied upon the following paragraph of the decision given by the Division Bench of this Court in the said writ petition.

We may clarify that the orders passed at Allahabad in the aforesaid writ petition obviously mean that the counselling has to be done for the seats which are still vacant and have not been filled in but if the students have already been admitted

by the colleges from amongst the students who had appeared in the Common Entrance Test but could not bring themselves within the cut of marks in merit, as per the government order dated 12.8.08, such seats cannot be taken to be unfilled for the purpose of the counselling which has been directed by the High Court.

4. On the strength of the aforesaid order, submission of learned Counsel for the petitioners is that the petitioners may be permitted in the examination which may be held in future. Since the petitioners have been admitted on the strength of the order of this Court, they are entitled to appear in the examination.

5. Learned Counsel for the University, on the other hand, has submitted that these students have been admitted within 15% quota. The Government Order dated 12.08.2008 provides that after receiving recommendation from the concerned University, the college will obtain approval from the Government and thereafter the admissions should be taken on the basis of transparent process by making publication in two daily newspapers Hindi/ English having maximum circulation out of the merit list of the students prepared by the Joint Entrance Examination. The opposite parties have taken admission in defiance of the aforesaid Government Order and have taken admission on the basis of their own whim and they have not adhered to the merit list prepared by the Joint Entrance Examination out of which the candidates were forwarded to the aforesaid colleges. It is also submitted that the interim order of this Court runs contrary to the Judgment of the Full Bench of this Court and therefore, no benefit can be claimed by the petitioners against the judgment of the Full Bench. The counselling was held by the University in pursuance to the direction issued by this Court at Allahabad in Writ Petition No. 59133 of 2008 and, therefore, no illegality can be attributed to the aforesaid counselling. The Judgment and order dated 05.01.2009 also provides that such seats cannot be taken to be unfilled for the purpose of counselling which has been directed by the High Court. In support of his contention, learned Counsel for the opposite parties has relied upon the case of Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others, to press his point that relief cannot be given to fructify illegality. The students admitted in the educational institutions in excess of the permissible seats cannot be allowed to appear in the examination. To the same effect cases are reported in State of Punjab and others Vs. Renuka Singla and others, and State of Maharashtra Vs. Vikas Sahebrao Roundale and others,

6. Learned Counsel for the opposite parties has further submitted that the Government Order dated 12.08.2008 provided that the students have to be admitted on the basis of the merit list. It is also submitted that in pursuance to the order passed in Writ Petition No. 59133 of 2008 certain students were allocated different colleges but considering the impact of the aforesaid order of the Division Bench, an order was passed that those candidates who have been admitted prior to the aforesaid order cannot be termed to be illegally admitted students.

7. I have heard learned Counsel for the parties and gone through the record.

8. The moot question which falls for consideration is as to whether the admissions of the petitioners which were taken on the basis of the own designed merit list prepared by the colleges can be termed to be valid admissions. The admissions of the petitioners were drawing leverage from the Government Order dated 12.08.2008. Clause-3 of the Government Order very clearly provides that the recommendations received by the colleges from the concerned University should be got approved from the Government and thereafter admission should be made by adopting a transparent procedure by making publication in two daily newspapers Hindi/English having wide circulation out of the merit list prepared by the Joint Entrance Examination. The petitioners have not been able to establish as to whether the college in question has got any approval from the Government or any recommendation was made by the University to take admission. The merit list relied upon by the college is its own list taking the shelter of the Government Order dated 12.08.2008. The said procedure adopted by the concerned college was altogether illegal and without authority of law and was in utter derogation of the procedure contained in the Government Order dated 12.08.2008.

9. The thrust of the argument is that the Division Bench of this Court on 05.01.2009 has held that the students who have participated in the Common Entrance Test but could not bring themselves within the cut off marks in merit, as per Government Order dated 12.08.2008, such seats cannot be taken to be unfilled for the purpose of counselling which has been directed by the High Court. The question is as to what direction was given by the High Court. The direction in Writ Petition No. 59133 of 2008 was for filling up of unfilled seats by means of a counselling and, therefore, no admission could have been taken before that counselling. There was no direction of High Court to take admission besides the merit list. The Government Order dated 12.08.2008 also provides the same thing that out of the Common Entrance Test, the admission would be taken on the basis of list supplied by the University after taking approval from the Government by adopting transparent procedure by the college, this was never done. The college was having no authority or right to take admission of these students out of the unmerited students who did not appear in the merit list. The admissions, therefore, were de-hors the provisions of law and the interim order passed by this Court.

10. Another factor which requires consideration is that this Court at Allahabad in Writ Petition Nos. 58508 of 2008, 61984 of 2008 and 64014 of 2008 has issued a direction to the State Government to calculate the unfilled seats and communicate the same to the Chhatrapati Shahu Ji Maharaj University, Kanpur, which was directed to hold a special counselling by 31st December 2008. In pursuance to the aforesaid order, the Government issued a Government Order dated 09.01.2009 whereby a direction was given that the order of this Court may be complied with and the vacant seats may be filled up by arranging a special

counselling. Chhatrapati Shahu Ji Maharaj University, Kanpur in pursuance to the aforesaid direction of the Court and the Government Order dated 09.01.2009 proceeded to hold special counselling and allocated students to the various colleges but the colleges did not take admission of these meritorious students and rather tried to insist upon their misdoing on the basis of the Government Order dated 12.08.2008 which also did not permit them to take admissions apart from the merit list.

11. Division Bench of this Court passed order on 05.01.2009 whereas the Full Bench of this Court in the case of Tuples Educational Society and Anr. v. State of Uttar Pradesh and Anr. 2008 (26) LCD 687, decided the matter finally on 31st March, 2008 wherein questions were answered as follows:

1. Whether the admissions to private unaided (minority and non-minority) Colleges imparting education for Bachelor of Education Courses recognized by NCTE and affiliated to the University can be made by any method other than by holding a common entrance test either by the State/ Universities or by all the colleges of the State coming together as provided in P.A. Inamdar's case?

Ans. No.

3. Whether in the absence of any common entrance test hold by all the Colleges coming together or a common entrance test conducted by the State Government or all the Universities in the State, the admissions can be made through the entrance examination held by individual Universities providing list of students through counselling to these Colleges?

Ans. Yes.

12. Judgment of Tuples Educational Society (Supra) was challenged in the Apex Court and the SLP was got withdrawn from the Apex Court with a statement that the State was going to hold examination of the students admitted in 2005-2006 of Purvanchal Vishwavidyalaya and 2006-2007 of Agra and Meerut Universities. Petitioners neither belong to any of the aforesaid sessions nor to any of the aforesaid Universities. The liberty was given by the Hon'ble Supreme Court only respect of Agra and Meerut Universities and Purvanchal Vishwavidyalaya. The petitioners' collage is affiliated to Dr. Ram Manohar Lohia Avadh University, Faizabad and the dispute of the petitioners is in respect of Session 2007-2008 which was never before the Hon'ble Supreme Court and the judgment of the Full Bench in this manner stands approved to that extent and the controversy decided therein.

13. The date of judgment of the Full Bench is earlier to the judgment of the Division Bench sought to be relied upon by the counsel for the petitioners dated 05.01.2009. So the order of the Division Bench goes against the order of the Full Bench. In the aforesaid situation, the Court has no option but to follow the verdict and law propounded by the Full Bench. From it, it is evident that University has been held empowered to hold and conduct entrance examination.

The special counselling having been held in pursuance to the directions of this Court in various writ petitions, the same has been given effect to and any admission taken by the colleges not from the merit list but out of the unmerited students, who were very low in merit in the Joint Entrance Examination, were not entitled to be admitted and the writ petition at the behest of such students for allowing them to appear in the examination by issuance of a mandamus is not maintainable and no such mandamus can be issued by this Court. Misconceived sympathy cannot be extended to these petitioners who have taken admission at their own risk. In *Vikas Sahebrao Roundale and Ors. (Supra)* it was laid down by the Apex Court that High Court cannot direct the students to appear in an examination and allocate the passed students to a recognized institution to prosecute their further courses as it could amount to disobey the law.

14. The claim of the petitioners, therefore, fails. The writ petitions are accordingly dismissed.