

(2003) 12 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 35468 of 2002

Aryan Institute of Management and Computer Studies	APPELLANT
Vs	
Vice Chancellor, Dr. B.R. Ambedkar University (Formerly Agra University) and Another	RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:

Citation : (2004) 2 AWC 1688 : (2004) 2 UPLBEC 1603

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : V.B. Singh and P.S. Baghel, for the Appellant; Pankaj Mithal and S.C., for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—Aryan Institute of Management and Computer Studies, Agra (in brief the institute) is affiliated to Dr. B. R. Ambedkar University, Agra. The institute applied to the State Government for grant of no objection certificate for starting B.Ed. course under self-financing scheme. The State Government granted no objection certificate to the petitioner for starting B.Ed. course under self-financing scheme on 10.2.2000 for the session 2000-2001. Thereafter National Council for Teachers Education, on 8.8.2000, granted recognition to the petitioner institute for one year for the academic session 2000-01 with the annual intake of 60 students. The State Government, by its policy decision dated 11.11.1997, fixed the number of seats for self-financing institutes. 50% of the seats of the total intake was to be filled by normal category candidates, 35% seats were to be filled under self-supporting category and the remaining 15% seats were to be filled from NRI/NRI sponsored category. The Chancellor, Agra University, Agra also granted affiliation to the institute for imparting education in B.Ed. course under self-financing scheme on 4.11.2000. The affiliation was valid till 2003 and now the institute had been granted permanent affiliation with effect from 3.9.2003. In the session 2000-01 though seats for 60 students were

available at the petitioner institute in B.Ed. course, but only 39 students took admission and the remaining 21 seats remained unfilled. In pursuance of Government order dated 14.12.1999 the remaining 21 seats were filled by the petitioner. The result of the students was declared by the respondents.

2. The dispute in this petition is with regard to session 2001-02. The entrance test for admission to B.Ed. course was held by the university and the students selected according to merit were sent to various colleges including the institute. On 3.12.2001 the University sent the first list of 30 candidates for normal category seats. Out of these 30 candidates only 11 appeared and took admission. The institute informed the university on 14.12.2001 that further names be sent for remaining 19 seats. The university sent another list on 27.12.2001 of 20 candidates under the normal category. Out of these only 7 students took admission and 12 seats remained vacant. This was informed by the institute to the university on 11.1.2002 and a request was made that a third list of 12 candidates be sent for admission on normal seats. And if the list was not received timely from the university, the institute would fill the seats itself under the Government order. But the university did not send any list to fill the vacant seats of normal category candidates. However, two students Awadhesh Kumar and Neeraj Kumar were admitted on 30.12.2001 and 27.12.2001 respectively on the normal category seats. The university sent a list of 21 students of self-supporting category on 4.1.2002. Out of these 21 candidates no one turned up for admission. This was informed to the university by the institute on 11.1.2002 and it was requested that another list be sent. The University sent the second list of self-supporting category on 15.1.2002 of 21 students, but again no one took admission. The institute again informed the university for sending the third list. The university sent a third list of 22 candidates under the said category on 31.1.2002. Out of these 22 candidates only three candidates turned up and took admission on self-supporting seats. The institute filled 20 normal category seats from the list sent by the University, 3 self supporting seats from the list of the University. Total 23 seats were filled by the institute from the lists sent by the University. The institute admitted 9 students under NRI category by placing reliance on a Government order dated 14.12.1995. The institute admitted 28 candidates who were from outside the merit list and largely from the students who had not appeared in the B.Ed. entrance examination. Therefore, the total seats filled by the petitioner institute for B.Ed. course for the session 2001-02 were 60. When their forms were sent to the University, the University rejected the forms of the students whose names did not find place in lists sent by the University. The institute filed instant writ petition in this Court on 29.8.2002, and by an interim order this Court permitted all the students who were admitted by the institute to appear in the examination subject to the decision of the writ petition. On 14.6.2002 the University informed the institute that on 31 seats illegal and irregular admissions have been made by the institute though the admission lists had been sent by the University and was available with the institute, and inspite of the information sought by the University about

admissions no reply was given by the institute. Therefore, those students who had been admitted from outside the merit list sent by the University, their admission was directed to be cancelled immediately and the remaining seats were directed to be filled from the lists sent by the University otherwise the students who were admitted by the institute from outside the lists sent by the University, would not be permitted to appear in B.Ed. examination and the petitioner's temporary recognition would not be extended. The institute was directed that an affidavit of Principal and Joint Secretary be filed before the University to the effect that in future admissions will be made only from the list sent by the University. It is this order dated 14.6.2002, Annexure-15 to this writ petition, which has been challenged in the instant writ petition.

3. I have heard Sri Vijay Bahadur Singh, learned senior counsel assisted by Sri P. S. Baghel for the petitioner, Sri Pankaj Mithal learned counsel appearing for respondent Nos. 1 and 2 and standing counsel appearing for respondent No. 3.

4. Learned counsel for the petitioner has urged that the institute tried to admit the students from the list sent by the University, but since no one was coming forward the list was again called from the University. So far as normal seats are concerned the University did not send the third list inspite of demand made by the institute. With regard to self-supporting seats, the University sent a third list. The last date for admission for self-supporting seat was 31.1.2002 and thereafter no list was sent by the University to the petitioner's institute. Thereafter, the institute admitted 28 students from outside the merit list prepared for B.Ed. training course. It is urged that the Government order dated 14.2.1999 clearly provides that on the vacant seats non-aided colleges and private institutes would grant admission themselves. He placed reliance on the order of the Apex Court in State of H.P. and Others Vs. Himachal Institute of Engg. and Technology, Shimla, .

5. On the other hand, Sri Pankaj Mithal learned counsel for the respondents has urged that as per Regulation 7 (a) of Chapter II of the Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent College) Order, 1987, to fill the seats in B.Ed. course every University shall organise its own competitive examination for admission to B.Ed. course in its affiliated, associated and constituent colleges. The examination for admission shall be organized on one and the same day. Regulation 2 of Chapter II prescribes that it would be responsibility of the college and the University to prepare the merit list for admission to B.Ed. course in an affiliated, associated or constituent college and the admission shall be made from the merit list so prepared. Therefore, it was urged that even if it is presumed that the colleges would take admission from outside the merit list it was not permissible for the colleges to admit the students who had not even appeared in the B.Ed. entrance examination conducted by the University. He also placed reliance on a notification dated 27.3.1999 wherein in paragraph 4.1.2. selection procedure has been provided that the candidates will be selected for admission on the basis of merit and the merit shall be determined

by their performance at the qualifying examination or by selection test or by interview. He urged that it was not open to the University to the institute to admit any student who had not appeared in B.Ed. entrance examination.

6. The question that arises for consideration in this petition is that where the seats are to be filled by the private colleges on the basis of entrance test conducted by the university but the students do not turn up to take admission in such colleges, whether the private colleges could fill the seats themselves or they should keep the seats vacant?

7. It is not disputed that the institute is recognised and affiliated to Dr. B. R. Ambedkar University, Agra for imparting education in B.Ed. course under the self-financing scheme. It has 60 seats. Out of 60 seats 30 seats are normal category seats and the rest are self-financing and NRI quota seats. It is not disputed that two lists of 30 and 20 (normal category) total 50 candidates was sent by the university out of which only 20 candidates took admission and 10 seats remained vacant and no third list was sent by the university. Under the self-financing category first list of 21 candidates, second list of 21 candidates and the third list of 22 candidates were sent. Out of these 64 candidates only 3 candidates took admission. Therefore, 23 out of 60 seats were filled by the institute from the lists sent by the university. The institute filled 9 seats under the NRI category. Thus, 32 out of 60 seats were filled. The institute largely admitted students from outside the merit list who had not appeared in B.Ed. Entrance Examination conducted by the University. Learned counsel for the respondent vehemently urged that these 28 seats could not be filled by the institute from outside candidates who did not even appear in B.Ed. Entrance Test.

8. The right to establish and administer educational institutions can be regulated by the Government or the university to ensure maintenance of proper academic standard. The essential ingredients of the management of the private institutions include admission of students and to prescribe quantum of fee to be charged from the students. The institute had been established for imparting education in B.Ed. course, which is a professional course. It cannot be disputed that for admission to any professional course merit must always play an important role. The merit of a student can be determined for admission to professional institute either by the marks obtained at the qualifying examination or on the basis of Competitive Entrance Test. But difficulty arises where the lists are sent by the university on the basis of competitive entrance examination for admission to private institutes and the students do not turn up to take admission, it results in vacant seats. It cannot be disputed that private professional institutions are established with huge expenditure in creating infrastructure, appointing staff and teachers etc. If the seats are left vacant because the students do not take admission in the institute on the basis of merit list sent by the university, then the institution would suffer huge losses.

9. The State Government visualising the difficulty faced by such private non-aided institutes, issued a Government order No. 4250/sattar-2-99-2 (85)/97 TC,

dated 14.12.1999 which permitted the private colleges to fill the seats on their own. Paragraph 3 of the Government order is extracted as under :

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10. From the Government order it is clear that these non-aided private colleges are required to fill the seats from the merit list prepared on the basis of combined entrance test, sent by the university. However, if the seats remained unfilled then the colleges are required to intimate the vacancies and ask for a second list. If the other list is furnished by the university within a week then the students would be admitted on the basis of the list sent by the university otherwise the vacant seats would be filled by the private colleges on their own. The only restriction is that where the seats are filled by the private colleges on their own the minimum eligibility qualifications would remain the same as fixed by the University. In the case in hand also the petitioner had requested the university to send another list but the University did not send any other list apart from the lists, which had already been sent. Therefore, the management filled the vacant seats in accordance with the Government order. It is not disputed that the candidates satisfied the conditions laid down for admission to the B.Ed. course by the University.

11. As regards the argument that the institute demanded exorbitant amount from the candidates, there is no material to substantiate it. The argument is based on certain complaints sent by some candidates to the University but no action was taken on it nor the university took cognizance of it. The procedure adopted by the institute being in accordance with the Government order cannot be faulted only because copies of uninvestigated complaints have been filed before this Court. The students admitted by the institute have appeared in B.Ed. examination under the interim order of this Court. Their admissions are liable to be regularised and the result is liable to be declared.

12. In the result, the writ petition succeeds and is allowed. The order dated 14.6.2002 passed by the respondents, Annexure-15 to the writ petition, is quashed. The respondents are directed to treat the admission of students made

by the petitioner in B.Ed. course in the session 2001-2002 to be regular admission and declare the result of the students who appeared from the institute of the petitioner within a period of one month from the date a certified copy of this order is produced before respondent No. 2.

13. The parties shall bear their own costs.