
(2009) 01 PAT CK 0064

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17966 of 2008

Ashutosh Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 01 PAT CK 0064

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Twenty students have joined this writ petition with the prayer to set aside the decision of the Patna University, whereby the admission of 146 students including the petitioners and respondent Nos. 6 to 26, to the Bachelor of Business Administration (Honours Course) (hereinafter referred to as "BBA"), has been cancelled, inter alia, on the ground that the same were beyond the sanctioned strength of seats for the course, and their admissions were actuated by ulterior motives and extraneous considerations. BBA is a three years course and the present writ petition is with respect to the session 2008-2011, commencing with the academic year 2008-09. Respondent Nos. 6 to 19, as well as respondent Nos. 20 to 26, are similarly circumstanced persons and were on their own motion impleaded as party respondents. The petitioners and respondent Nos. 6 to 26 make common cause in challenging the action of the University. In substance, the prayer of the petitioners and respondent Nos. 6 to 26 is to set aside the order dated 20.11.2008 (Annexure M), issued under the signature of the Registrar of the Patna University, whereby the admission of the said 146 students have been declared null and void.

2. The affairs of the Patna University are governed by the Patna University Act 1976 (hereinafter referred to as "the Act"). In exercise of the powers conferred by Sections 37 and 38 of the Act, and as per the procedure prescribed therein, the University created the course of BBA and issued the requisite order, a photocopy of which is marked Annexure-1 to the writ petition. In terms of Sections 37 and 38 of the Act, such an order of the University is described as

"Ordinance". It is evident on a plain reading of the ordinance dated 11.4.2005 (Annexure -1) that the University had sanctioned 60 seats, and 5 additional seats for "...wards of NRI on payment of fee and first-come-first-serve basis". The University issued the requisite "Regulations" in terms of Section 39 of the Act, inter alia, prescribing the structure of the courses, fee structure etc., photocopy of which is part of Annexure-1. The University had published the advertisement for the course in question (apart from other courses not relevant in the present context) which had appeared in the local dailies on 2.5.2008 (Annexure-C), inviting applications from eligible candidates. After completion of the selection process, the merit list was prepared and 60+5 candidates were admitted without causing any grievance. The same is indeed not the subject matter of the writ petition. Thereafter, 146 more students were admitted over and above the sanctioned strength. The list of these 146 persons is marked Annexure-F to the supplementary counter affidavit of the University, some of whom are the petitioners and respondent Nos. 6 to 26.

3. The Vice Chancellor of the University received reports about irregularities committed in the admission of 146 students leading to constitution of a fact-finding Committee, comprising of three senior members of the faculty of the University, headed by the Principal of the Patna Science College. The Committee submitted its report dated 15.11.2008, and a copy of the findings is marked Annexure-J to the supplementary counter affidavit. Thereafter action has been taken as per the recommendations, the admissions have been declared null and void by the impugned order, the Course Coordinator has been placed under suspension, and has been served with charge-sheet. The Director of the Course-cum-Principal of the Patna College has been transferred, has been served with charge-sheet, and similar action has been taken against two clerks of the Patna College.

4. It is stated in the writ petition that the BBA course has started with the session 2005-2008, commencing with the academic year 2005-06. The course became very successful. Large number of students applied for that batch and the successive batches, all of them got placements with various Companies etc. Encouraged by the situation, the Director submitted his recommendation on 25.7.2007 (Annexure-2), to respondent No. 3, (Vice-Chancellor of the Patna University), to enhance the sanctioned strength of the course from 60 to 120, and from 5 to 20 for NRIs, for the session 2007-2010. This was followed by letter dated 25.8.2008 (Annexure -5), issued under the joint signatures of the then Co-Ordinator as well as the Director of the Course, to the Minister for the Department of Human Resource Development, through the proper channel, requesting for enhancement of seats in BBA course giving detailed facts and figures in justification of enhancement of the sanctioned strength. It is relevant to state that the selection process for the 60+5 candidates for the session in question had already taken place, and classes commenced. This was followed by letter dated 1.9.2008 (Annexure 7 series), from the Minister to the Vice-Chancellor, approving the request of the college for "start of the additional

sections in BBA course in Patna University." The letter further stated that "....if needed, administrative formalities should be used at the earliest". The approval is for the start of additional BBA course from the present financial year. The Minister had also issued his letter dated 2.9.2008 (Annexure 7 series), addressed to respondent No. 3 (the Vice-Chancellor), sanctioning 20 extra seats for NRIs for the BBA course. This was followed by admission of at least 146 students which is the subject matter of the present writ petition.

5. While assailing the validity of the impugned action, learned Counsel for the petitioners submits that the seats were validly enhanced by the State Government. He further submits that all the petitioners fulfilled the minimum qualifications for admission to the course, and figured in the merit list, though lower down because the candidates above them were no longer interested in joining the course for their own reasons, for example, they took admission elsewhere. He next submits that none of the candidates above the petitioners in the merit list has raised grievance anywhere. He next submits that the University is bound by the principles of estoppel, inasmuch as the students had deposited money in the treasury on the strength of the challans issued by the authorities. He relies on the following reported judgments :

(i) Shri Krishnan Vs. The Kurukshetra University, Kurukshetra,

(ii) 1982 BBCJ 302 (Amresh Kumar v. Principal, Medical College)

He next submits that cancellation of the admissions without issuance of show-cause notices to the petitioners is violative of the principles of Natural Justice. He lastly submits that the equities are entirely in favour of the petitioners who have already attended classes for two months. None else can be admitted at this belated stage.

6. Learned Counsel for respondent Nos. 2 has opposed the writ petition. He submits that the Ordinance and the Regulations have been issued in terms of Sections 37 and 38 of the Act. It can be amended only as per the detailed procedure prescribed therein. He relies on the judgment of a Division Bench of this Court reported in 1990 BBCJ 132 [Patna High Court Ministerial Officers Association v. State of Bihar]. He next submits that in a situation like the present one, prior permission of the State Government in terms of Section 35 is imperative because it may involve creation of new posts with financial implications. The alleged enhancement of seats without following the mandatory procedure prescribed by Sections 37 and 38, as well as Section 35 of the Act, is null and void. Neither the petitioners nor respondent Nos. 6 to 26, have placed on record any material to show, nor is any available in the records of the University, that the Vice-Chancellor of the University had forwarded the recommendations of the Director and the Course Co-Ordinator to the State Government for enhancement of seats. He next submits that the letters dated 1.9.2008 and 2.9.2008 (Annexure 7 series), from the Minister to the Vice-Chancellor, were not orders of the Government. No decision at the Government

level was taken to enhance the seats. He submits that, in any view of the matter, the recommendation was to enhance the seats to the extent of 60+15 seats, and at least 146 students were admitted. He next submits that enhancement of seats were not notified, let alone given wide publicity, so that the students in the merit list may take their turn for Admission. The alleged two notices dated 4.9.2008 (Annexure 12 series), described as "Admit for Waiting List", and "Admit for Waiting List NRI quota seats", are of doubtful authenticity, and even if taken to be on their face value, were alleged to have been pasted on the notice board which has very limited circulation/publicity, and does not meet the requirement of law. He relies on the following reported judgments:

(i) Rita Kumari Vs. The State of Bihar and Others,

(ii) Ashutosh Kumar Vs. The State of Bihar and Others

He also submits that the Court should never perpetuate an illegality. He relies on the judgment of the Supreme Court reported in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, .

7. Learned Counsel jointly representing respondent Nos. 3, 4 and 5 has made common cause with respondent No. 2, and has opposed the writ petition. He submits that the seats were never validly enhanced. He next submits that except petitioner No. 7 (Priyanka Kumari), all the 145 candidates were down below the merit list and have been admitted by surreptitious methods. He also submits that the candidates admitted against NRI quota did not qualify for the quota. None of them were wards of NRIs. He further submits that a large number of admissions were made much before receipt of the letters dated 1.9.2008 and 2.9.2008 (Annexure-7 series), and also before the notices were allegedly pasted on the notice board. The recommendations of the Director and the Course Co-Ordinator were for enhancement of seats to the extent of 60+15 seats, but 146 or more candidates were instead admitted. He further submits that admission to any course beyond the sanctioned strength is impermissible in law and can never be countenanced. He relies on the judgment of the Supreme Court reported in 2000 (4) PLJR (SC) 99 (Mallikarjuna Mudhagal Nagappa v. State of Karnataka). He next submits that the impugned action has been taken after the fact-finding Committee submitted its report. Action is being taken as per the findings of the report against the allegedly erring persons. He lastly submits that suspension of the then Director-cum-Principal of the Patna College as well as the clerical staff, and equally criminal case against the erring persons, is in contemplation.

8. Learned Counsel for respondent Nos. 6 to 9, as well as for respondent Nos. 20 to 26, have supported the writ petition.

9. Learned Counsel for the petitioners in reply has submitted that it is evident from a perusal of the Ordinance (Annexure 1) that prior permission of the State Government was the only requirement for enhancement of seats. He further submits that a course on self-financing basis does not need any financial assistance from the State Government or the University and, therefore, the

provision of Section 35 of the Act is not attracted. He also submits that sanction of the State Government was conveyed by the letter dt. 1.9.2008, of the Minister for Human Resources Development Department, sanctioning additional sections for the course without specifying the exact number of seats, which was left to the discretion of the Director and the Course Co-Ordinator. He lastly submits that the NRI seats were enhanced to the extent of 20 more seats as per the letter dated 2.9.2008 of the Minister (Annexure 7 series).

10. We have perused the materials on record and considered the submissions of learned Counsel for the parties. We shall first deal with the issue whether or not there was valid enhancement of the sanctioned strength of seats for the course. It is evident on a perusal of the Ordinance (Annexure 1), that maximum number of 60 seats, and 5 additional seats for the wards of NRI, were created for the course. The Ordinance stipulated that the same may be revised with prior permission of the State Government. Sections 37 and 38 of the Act provide detailed procedure for enhancement of seats. In substance, Section 37 empowers the Syndicate of the University to issue ordinance making provision for the items mentioned therein. Section 38 of the Act provides that the Ordinance u/s 37 shall be submitted to the Senate which, in its turn, may recommend to the Chancellor for the approval of the Ordinance. It is evident that the Ordinance (Annexure 1) could be modified after following the procedure prescribed by Sections 37 and 38 of the Act. The petitioners have not placed any material on record to show that the procedure prescribed in Sections 37 and 38 were followed. It appears that enhancement of the seats were the handiwork of the Director and the Course Co-Ordinator. We do not wish to make any comment on the conduct of the Minister because he is not a respondent in the present proceedings. As stated hereinabove, the Ordinance (Annexure 1) sanctioned 60+5 seats which by necessary implication means that the members of the teaching faculty, the staff, and the infrastructure are available to meet the requirements of the strength to that extent. It is inherent in the situation that enhancements of seats may involve addition of the members of the teaching faculty and the staff, and possibly infrastructure also. The existing strength of members of the teaching faculty and staff is meant to cater to 65 students, whereas at least 146 more students were admitted. Section 35 is headed "Post for appointment shall not be created without sanction of the State Government". The same Section uses the expression "...without prior permission of the State Government" also occurring in the Ordinance (Annexure 1). Law is well settled that it is the duty of the State Government to meet the entire deficit of the Universities created under the Act. Reference may be made to Section 47 of the Act and the judgments. Therefore, the present case is covered by the terms of Section 35 of the Act also. Prior permission of the State Government in terms of Section 35 of the Act in the present situation was essential.

11. I must consider the documents placed on record by the petitioners in an effort to satisfy this Court that the seats were enhanced in accordance with law. The letter dated 25.7.2007 (Annexure 2) is from the Director to the Vice-

Chancellor, recommending enhancement of seats from 60 to 120 seats, and for the NRIs to be increased from 5 to 20, for the session 2007-2010. The letter dated 25.8.2008 (Annexure 5) is under the joint signature of the Director and the Course Co-Ordinator, to the Minister for the Department of Human Resources Development, through the Registrar of the Patna University, recommending enhancement of seats. This was followed by the letter dated 1.9.2008 (Annexure 7 series), from the Minister to the Vice-Chancellor, conveying approval of the State Government of additional sections in the BBA course. It also stated that "...if needed, administrative formalities should be used at the earliest." The letter dated 2.9.2008 (Annexure 7 series), added 20 more seats for NRIs. It is manifest on a perusal of these letters that the Vice-Chancellor of the University nowhere figured except that the letters were addressed to him. He does not seem to have taken any action at all on the letters received from the Director and the Course Co-Ordinator, nor did he act upon the letters received from the Minister. This is apart from non-observance of the procedure prescribed by Sections 37 and 38, as well as Section 35 of the Act. It thus appears that enhancement of seats and admission of students to these seats was the malafide act of the Director, the Course Co-Ordinator, and others. Furthermore, learned Counsel for respondent No. 2, as well as respondent Nos. 3 to 5, are right in their submission that the Director and the Course Co-Ordinator had recommended for enhancement of seats to the extent of 60+15, whereas at least 146 students have been admitted.

12. It appears from a perusal of the letter dated 16.11.2008 (Annexure 13 to the petitioners' rejoinder), from the Personal Secretary of the Minister to the Vice-Chancellor, that the Minister's said letter dated 1.1.2009 (Annexure 7 series) was a "gair-sarkari preshan". It thus appears that Annexure-7 was not an order of the State Government. The Minister ought to have taken full care to follow the prescribed procedure as per the statute and should not have ventured to enhance the sanctioned strength by issuing a "gair-sarkari preshan", and without obtaining prior approval of the State Government.

13. Learned Counsel for the official respondents have rightly relied on the Division Bench judgment of this Court in *Patna High Court Ministerial Officers' Association v. State of Bihar* (supra), wherein it has been laid down that the same procedure has to be followed for revising or altering an administrative decision. The proposition applies with greater force to the present case which relates to exercise of statutory powers.

14. To conclude this part of the matter, we are convinced that the procedure prescribed for enhancement of seats of the BBA course was not followed. It was the handiwork of the Director, and the Course Co-Ordinator of the University, and others.

15. Learned Counsel for the petitioners has next contended that the petitioners fulfilled the minimum educational qualifications, and did figure in the merit list. Learned Counsel for respondent Nos. 2 to 5, inter alia, submits that some of the

candidates amongst the 146 students including the petitioners did not appear at the entrance test. It is further manifest from a perusal of the merit list (Annexure F) that, except petitioner No. 7 (Priyanka Kumari), all the rest figured very lower down in the list. Paragraph -18 of the supplementary counter affidavit of respondent Nos. 3 to 5 is reproduced herein below:

About the petitioners:

Sl

Name

Pet. No.

Marks

Rank

Roll No.

Category

1

Ashutosh Kr.

1

68

403

4468

GEN

2

Manish Kumar

2

66

489

5493

GEN

3

Anamika

3

67

429

4298

NRI

4

Ankita Kumari

4

61

588

5278

SC

5

Monika

5

76

231

4243

BCI

6

Ravi Shankar

6

53

886

5133

GEN

7

Priyanka Kumari

7

91

63

4936

GEN

8

Manjari Kumari

8

70

346

4699

GEN

9

Dinanath Singh Pri.

9

65

489

5138

BCI

10

Abhishek Kant

10

63

545

4807

BCI

11

Pawan Kumar

11

65

489

4034

BCII

12

Chandan Kr. Sah

12

76

231

4316

BCI

13

MD. Kamran Arif

13

46

1051

5544

GEN

14

Chandan Kumar

14

48

1051

5458

GEN

15

Niharika Ranjan

15

58

679

4269

GEN

16

Avinash Kaushik

16

70

346

5553

GEN

17

Kausar Khan

17

67

429

4110

GEN

18

Sonam Kumari

18

76

231

5081

BCI

19

Ahmar Hussain

19

64

509

4467

GEN

20

Versha Rani

20

66

453

5468

GEN

About the Respondents:

Sl

Name

Pet. No.

Marks

Rank

Roll No.

Category

1

Rajeev Kr. Pathak

6

60

610

5291

GEN

2

Renu Kumari

7

68

390

4143

GEN

3

Sudheer Kumar

8

69

369

4640

BCI

4

Najmus Saquib

9

57

726

4015

GEN

5

Rajesh Kumar

10

60

726

5499

GEN

6

Sujeet Kumar

11

69

369

4003

BCI

7

Ravi Ranjan

12

68

390

4897

GEN

8

Juhi Rani

13

72

295

4414

GEN

9

Dilip Kumar

14

59

655

5774

GEN

10

Sudarshan Kumar

15

59

655

4268

GEN

11

Noopur Kumari

16

79

179

5085

GEN

12

Dhiraj Kr. Dubey

17

40

1171

4385

GEN

13

MD. Danish Khan

18

69

369

5197

GEN

14

Aman Kr. Dubey

19

83

134

5460

GEN

It is equally manifest from a perusal of the merit list that there were three parts of the selection process, namely, Theory, Personal Interview, and Group Discussion. Some of the candidates were absent at one or more than one of the parts of the selection process and yet they were selected. It is manifest that selection of 146 candidates (except petitioner No. 7) was shocking and all norms were thrown to the winds.

16. Learned Counsel for respondent Nos. 3 to 5 is right in his submission that the Course Co-Ordinator had passed orders for admission of many of the candidates much before the Minister's letter was received. As stated hereinabove, the Minister's letters are dated 1.9.2008 and 2.9.2008 (Annexure-7 series), whereas orders for admission were passed earlier. The following examples are illuminating:

Name of the candidate

Date of order for admission

Date of deposit

Ankita Kumari Pet. No. 4

29.8.2008

Ms. Anamika Pet. No. 3

29.8.2008

Abhishek Kant Pet. No. 10

29.8.2008

Shwet Lohit

1.9.2008

Ram Sonaj Kumar

29.8.2008

Amit Raj Resp. No. 23

26.8.2008

Subham Kumar

29.8.2008

Kumar Mrinal

29.8.2008

Apurva Raj NRI quota

2.9.2008

Md. Khalid Anjum NRI quota

25.8.2008

Rajesh Kumar NRI quota

1.9.2008

Kumar Gaurav NRI quota

29.8.2008

Rahul Kumar

25.8.2008

It is evident that the Course Co-Ordinator had passed orders for admission of many of the candidates before the Minister's letters were received. It is further relevant to state that, according to the petitioners, the notices were pasted on the notice board on 4.9.2008 (Annexure 12 series). All these combined together speak volumes of the complicity of the Director, the Course Co-Ordinator, and others in admitting ineligible students by under-hand means.

17. Admission of ineligible students in the NRI quota, who did not qualify for the same, is equally manifest on the face of it. The Ordinance (Annexure 1) clearly stipulates that the seats for the NRIs quota were reserved for the wards of the NRIs. In other words, in order to qualify for consideration in this quota, the candidate has to satisfy the condition that he is the ward of a NRI. NRI has been defined in Foreign Exchange Regulation Act 1973, which means as follows:

(i) Indian citizens who stay abroad for employment or for carrying on a business or vocation or any other purpose in circumstances indicating an indefinite period of stay abroad.

(ii) Indian citizens working abroad on assignment with foreign government agencies like United Nations Organisation (UNO), including its affiliates, International Monetary Fund (IMF), World Bank etc.

(iii) Officials of Central and State government and Public Sector undertaking deputed abroad on temporary assignments or posted to their offices, including Indian diplomat missions, abroad.

It is further stated in paragraph 26 of the supplementary counter affidavit that "ward" is taken to be the son/daughter/spouse of a person who is under reference. Therefore, in terms of the Ordinance, the additional seats were meant for sons/daughters/spouse of a NRI. The following chart in paragraph 28 of the counter affidavit illumines the position and clearly reflects that none of the persons admitted to this quota qualified for admission:

Sl. No.

Name of candidate

Rank

Roll No.

Sponsored by

Nationality

1.

Anamika (Pet. 3)

429

4298

Lilu Ben N. Patel, Not a Relation

US Citizen

2.

Abhishek Kant (Pet. 10)

45

4807

Vivek Narayan Distant Relative

Austrialian

3.

Rahul Kumar

588

5330

Zahid Imam Not a Relative

Indian

4.

Nimmi Kumari

369

5513

Jagat Prasad Uncle but not clarified

No Passport enclosed

5.

Somi Kumari

1208

4464

Neeraj Prasad Uncle

NRI

6.

Shwet Lohit

726

5518

No Paper

No paper

7.

Ram Sanoj Kumar

545

5319

Raushan Kumar Singh No relation

NRI

8.

Amit Raj

231

5283

Manoj Raj family Friend

NRI

9.

Shubham Kumar

655

5067

Manoj Kr. Shah Cousin

NRI

10.

Kumar Mrinal

220

Anshul Anand Cousin

Bangalore

11.

Asif Anwar

295

5195

No Paper

No Paper

12.

Apurva Raj

545

5109

Md. Murad Ali Not a Relative

Faint paper

13.

Md. Khalid Anjum

588

4608

Md. Masood Iqubal

Not Clear

14.

Rajesh Kumar

588

5334

Manoj Kumar Brother

Not an NRI simply visited Thailand on Tourist Visa

15

Kumar Gaurav Got back his money leaving the claim

489

4018

Chandra Prakash Prasad Singh

No Paper submitted

18. It is manifest that candidates, who were not wards of NRIs, were given seats reserved for the wards of NRIs. For example,

(i) Petitioner No. 3, Anamika, is the daughter of Dinanath Prasad, whereas her case was sponsored by Lilu Ben N. Patel of USA;

(ii) Petitioner No. 10, Abhishek Kant, was admitted on the recommendation of Vivek Narayan of Australia. Vivek Narayan claims to be a distant relative of Abhishek Kant;

(iii) respondent No. 3, Amit, son of Rabindra Prasad, was sponsored by Manoj Raj, a close family friend,

(iv) Subham Kumar, son of Haridwar Prasad Gupta was sponsored by Manoj Kumar Shah. According to the undated letter (Annexure H) sponsoring him,

Shubham Kumar is the son of the uncle of Manoj Kumar Shah;

(v) Kumar Mrinal, son of Vinay Kumar Sinha, was sponsored by Anshul Anand. According to the letter dated 29.8.2008 of Kumar Mrinal sponsoring him, he is the cousin of Anshul Anand;

(vi) Asif Anwar did not submit any paper at all in support of his claim notwithstanding which he was admitted;

(vii) Apurva Raj submitted very faint / illegible papers and was sponsored by Md. Murad Ali, not a relative at all;

(viii) Md. Khalid Anjum, son of Usman Dhani was sponsored by Md. Masood Iqbal who claims to be candidate's uncle;

(ix) Rajesh Kumar was sponsored by Manoj Kumar, his younger brother, who claims to be NRI on the strength of his visit to the Kingdom of Thailand for a period of one week as a tourist;

(x) Kumar Gaurav, son of R.K. Singh, was sponsored by Chandra Prakash Singh who claims to be the elder brother of father of Kumar Gaurav.

It is thus evident that the seats/meant for the wards of NRIs were given to persons wholly ineligible for the same.

19. Learned Counsel for the petitioners has also contended that the University is bound by the principles of estoppel, inasmuch as they had deposited the fee by means of challans provided by the authorities. The contention is stated only to be rejected. Law is well settled that a Government or governmental authority is not bound by the ultra vires acts of its employees. Their admissions were acts of fraud attributable to the Director-cum-Principal, the Course Co-Ordinator, and the guardians of the candidates, and others. The University is obviously not bound by the illegal acts of those persons and were their individual acts. There are ample materials on record to show that the parents of the candidates were actively involved in obtaining admission for their candidates by illegal means, and by hook or by crook as the hackneyed expression goes. Reference may be made to the judgment of the Supreme Court in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . The following portion of the judgment is relevant in the present context:

6. The second contention is that the Municipality is estopped from levying or recommending the levy of the tax to the government as in the proclamation of sale it notified that no Octroi Duty will be levied and it was only in pursuance of such representation, the petitioners purchased the property. We feel this plea should also fail because the Municipal Committee had no authority to exempt the Fateh Market from the levy of Octroi Duty. If the Municipal Committee had passed a resolution or issued a notification that no Octroi Duty will be levied, it will be ultra vires of the powers of the Municipal Committee. When a public authority acts beyond the scope of its authority, the plea of estoppel is not

available to prevent the authority from acting according to law. It is in public interest that no such plea should be allowed.

Paragraph 22 of the judgment in the case of Chetlal Sao and Another Vs. State of Bihar and Others, is also relevant in the present context and is reproduced hereinbelow:

22. Mr. Debi Prasad's emphasis on some of the general observations in Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and Ors. (supra) loses sight of the fact that later a co-equal Bench in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, strongly dissented therefrom in some details in paragraphs 40 to 51 of the report. However, specifically covering the point before us, it has been observed therein as follows:

On a consideration of the decisions of this Court it is clear that there can be no promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority.

The following portion of the judgment of a Full Bench of this Court in Rita Mishra v. Director, Primary Education 1987 PLJR 1092, is to the same effect:

22. ...Particular reliance was placed on Shalimar Paint Colour and Varnish Co. Ltd. and Anr. v. Chief Secretary to Govt. Travancore-Cochin ILR 1954 Tra-Coc 453 : AIR 1955 Trav-Coc 4125 holding that if the State has not authorized its agent then the State cannot possibly be bound therefore. Even nearer home, it is now well settled that the State cannot be bound by the unauthorized acts of its employee far from it being so, bound by acts which are plainly illegal. No concept of promissory estoppel arises against the State if its servants either act beyond the scope of their duty or contrary to its directions or standing administrative instructions. This aspect has been recently examined by the Full Bench in Chetlal Sao and Anr. v. State of Bihar and Ors. 1986 BBCJ 109 : 1986 PLJR 749, wherein after considering both principle and precedents it has been held as under:

To conclude on this aspect, the answer to question No. 3 is rendered in the negative and it is held that the State is not bound by the doctrine of promissory estoppel for the acts of its subordinates done in violation of its directions or administrative instructions.

20. Law is equally well settled that nobody can retain a benefit obtained by fraud, misrepresentation or the like. Reference may be made to the judgment of the Court of Appeal in England in Lazarus Estates, Ltd. v. Beasley reported in (1956) 1 All E.R. 341. The following portion of the judgment is relevant in the present case:

...If this argument is correct, the landlords would profit greatly from their fraud.

The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever....

The ratio of this judgment has been applied by the Supreme Court and the High Courts in innumerable cases. Reference may be made to the judgment of the Supreme Court in *Ram Chandra Singh Vs. Savitri Devi and Others*, and *Ram Chandra Singh Vs. Savitri Devi and Others*, .

21. Learned Counsel for the petitioners has also submitted that the impugned order has been passed whereby without affording any opportunity to the candidates to show cause. Law is well settled by a long line of cases that in a situation where it is a case of mass copying or all-pervasive malaise, the requirement is that the authorities must satisfy themselves that it was a case of all-pervasive illegality. This procedure seems to have been meticulously followed by the Vice-Chancellor. As soon as he learnt of the illegal admissions, he constituted a fact-finding Committee comprising of three senior members of the faculty of the Patna University headed by the Principal of Patna Science College. The report of the Committee is a clear indictment of the misdeeds of the Director, Course Co-Ordinator, and others. The entire process of admission is reeking with fraud and corruption, and is undoubtedly a case of all-pervasive illegality. The report was followed by the impugned order dated 20.11.2008 (Annexure M). This was further followed by the administrative action against the persons so involved. I am thus convinced that the Vice-Chancellor took care to determine the extent of illegality committed in admission of 146 candidates and has, therefore, rightly cancelled the admission of 146 candidates as a whole. Law is equally well settled that in a situation of all-pervasive illegality like the present one, individual notices need not be served on the candidates and the principles of natural justice give way to the aforesaid procedure. In other words, the requirements are two-fold in order to dispense with notices to adversely affected individuals - the illegality in the selection process should be all-pervasive, and the concerned authorities have taken care to find out the same by appropriate administrative measures/enquiry. Reference may be made to the judgment of a Division Bench of this Court in *Bihar School Examination Board Vs. Rajeev Kumar and Others*, .

22. The law laid by the Supreme Court in *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, is illuminating. Paragraph 22 is reproduced hereinbelow:

22. Chinnappa Reddy, J. in *S.L. Kapoor Vs. Jagmohan and Others*, laid two exceptions (at p. 395 of SCC): (at pp. 147 and 148 of AIR) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not

apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

23. The following portion of the judgment of the Supreme Court in *Union of India and Others Vs. O. Chakradhar*, is also relevant:

12...The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some....

24. Reference may also be made to the judgment of the Supreme Court in the case of *Mohd. Sartaj v. State of U.P.* (2006) 2 PLJR 167 (SC). Paragraphs 19 and 20 are reproduced hereinbelow:

19. In the present case, the appellants' case fall within the exception laid down in *S.L. Kapoor's* case (supra) and other supporting cases, as admittedly, the appellants were not qualified and they did not possess the BTC or Hindustani Teacher's Training Certificate or Junior Teacher's Certificate or Certificate of Teaching or certificate of any other training course recognized by the State Government as equivalent thereto at the time of their initial appointment. In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and therefore no hearing was required before the cancellation of their services.

...Therefore, it is apparent that any person having the basic qualification for the appointment can produce it before the concerned official so that immediate steps can be taken with regard to the order of appointment cancellation.

20. In our opinion, on the above facts no prejudice has been caused to the appellants by not serving notice of giving hearing before the order of cancellation was issued.

25. Reference may also be made to a Division Bench judgment of this Court in *Diwakar Pd. Yadav @ Diwakar Pd. and Others Vs. State of Bihar and Others*, . Paragraphs 15 and 17 of the judgment are reproduced hereinbelow:

15. The rules of natural justice are not embodied rules. It is true that these rules have been made applicable to administrative enquiries also but whether or not it will apply to a given case depends upon the facts and circumstances of that case. It is not a futile exercise and cannot and should not be made an empty formality. The rule of natural justice is intended to inject justice into law and cannot be applied to defeat the ends of justice or to make the laws lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation (De Smith's Judicial Review of Administrative Act, page 238). The petitioners in these cases were said to have been appointed on temporary basis and their services were terminated after giving them one month's notice. In the case of Bijoy Kumar Bharti and Others Vs. State of Bihar and Others, Full Bench of this Court held that in the case of temporary appointee who had no right to the post, termination could take place without giving them any opportunity of being heard before taking the decision. In a similar situation it was further held that the effect of the impugned orders, where the termination was on the ground of illegality or irregularity in the initial appointments, was to declare that from the beginning there was no valid appointment. In such cases it was only fit and proper that the alleged illegality or irregularity should be explained in the order. If the reasons are not supplied, the order would be liable to challenge on the ground that non-supply of reasons could raise a presumption that no reasons existed. So far the present cases are concerned the impugned orders would show that the services were terminated on the grounds of illegality and irregularity in the initial appointments. There was no allegation against the petitioners. The guilty parties are the appointing authorities or officers of the State. In the case of Bijoy Kumar Bharti (supra) it was observed that in such cases it was expected that the Government authorities concerned should take appropriate action against those who were guilty for the alleged illegality or irregularity in the appointment. We are informed that proceedings have been initiated against the erring officers. A similar view appears to have been taken by Mathew, J. as Judge of the Kerala High Court in P. Kunhikrishnan Nair Vs. State of Kerala and Others, . In that case the termination of service was on the ground that the persons appointed was ineligible for being appointed. The learned Judge observed that it was not an order cancelling a valid or even a voidable order; it was merely a declaration that there had been no appointment to the post. In such circumstances, it was found that there was no violation of principles of natural justice if opportunity of being heard had not been given. A Division Bench of Kerala High Court in K.N. Gopalan v. The Managing Director and Anr. 1979 (2) SLR 408 also took the same view that where the termination was on the ground of illegality or irregularity in the initial appointment it was only to declare that from the beginning there was no valid appointment. In such a situation I hold that the petitioners were not entitled to any show cause, in the facts and circumstances of these cases and the question of allowing the applications on the ground of alleged violation of principles of natural justice does not arise.

17. To sum up I find and hold that the petitioners of these writ applications have

not been validly appointed. They cannot challenge the impugned orders on the ground of alleged violation of principles of natural justice. I also hold that they are not entitled to any direction for payment of arrears of their salary for the period they claim to have worked.

Reference may also be made to the judgment of a learned Single Judge of this Court in *Grishnath Dubey Vs. State of Bihar and Others*. The relevant portion of paragraph 11 of the judgment is reproduced hereinbelow:

11. In the present case, the District Compassionate Committee, recommended for the petitioner's appointment to a Class IV post and accordingly, petitioner was appointed as Peon. Thereafter the case of the petitioner was not placed before the District Compassionate Committee but the petitioner was adjusted as a Clerk. Thus, the petitioner was appointed as Clerk without following the procedure meant for appointment. In such a situation, the principles of natural justice is not attracted. The view, which I have taken finds support from a Full Bench judgment of this Court in the case of *Rita Mishra and Others Vs. Director, Primary Education, Bihar and Others etc.*, ...

26. Learned Counsel for the petitioners has also submitted that the equities are in favour of the petitioners. The contention is once again stated only to be rejected. I have not the slightest manner of doubt that enhancement of seats and the consequent admission of 146 candidates including the present petitioners and respondent Nos. 6 to 26, was high water-mark of fraud. The law laid down in *Lazarus Estate Ltd. (supra)* is applicable on all fours in such a situation. When the seats have not been sanctioned, candidates down below in the merit list have been admitted without any publicity, many above them have been left out, there cannot be the question of allowing them to retain the benefits obtained by fraud. The petitioners and respondent Nos. 6 to 26 cannot be permitted to retain the benefits obtained by fraud.

27. The petitioners have placed on record photocopies of two notices dt. 4.9.2008, under the signature of the Course Co-Ordinator (Annexure 12 series), meant for candidates for "Admit in Waiting List", and "Admit in Waiting List for NRI Quota". On a perusal of the materials on record, authenticity of these notices appear to be apocryphal. Taking the case of the petitioners for the sake of argument at the highest, those were pasted on the notice board which have very limited publicity value. Law is well settled that, in such a case, advertisement should be published in local dailies or such means of wide circulation, so that all eligible candidates may come to know of the vacancies. As stated hereinabove, those notices were of 4.9.2008, and the Course Co-Ordinator had passed orders for admission of a large number of candidates much before the letters of the Minister were received and the notices were allegedly pasted on the notice board. Law is well settled that public employment in this country is a national wealth and every citizen has unrestricted right of access to the same which is possible only by giving wide publicity to the vacancies in local dailies and such other efficacious means, failing which it becomes denial of a constitutional right,

and have to be set aside on that ground alone. This principle of law is equally applicable to the present case where the candidates are seeking admission to the course and that too a vocational course like BBA.

28. Learned Counsel for respondent No. 2 is right in relying on the judgment of the Supreme Court in *Secretary, Jaipur Development Authority v. Daulatmal Jain* (supra), wherein it has been laid down that the act which would amount to perpetuating an illegality through judicial process cannot be permitted by the courts. In view of the foregoing discussion, it is impossible for this Court to perpetuate the illegality of admission of these students obtained by illegal means.

29. Learned Counsel for respondent Nos. 3 to 5 is right in inviting attention to the findings recorded by the fact-finding Committee that the Director and the Course Co-Ordinator had taken the extraordinary step by directing 146 candidates to submit affidavits of an unprecedented nature. The relevant portion of one of the affidavits is reproduced hereinbelow:

That I have not given any kind of bribe to any person for admission and I have not promised to give any kind of bribe in future.

Affidavits of a large number of candidates is marked Annexure I series to the supplementary counter affidavit. These affidavits make a ludicrous reading and speak volumes about the culpability attributable to all those who participated in committing the fraud.

30. The following portion of the judgment of the Supreme Court in *Mallikarjun Mudhagal Nagappa v. State of Karnataka* 2000 (4) PLJR (SC) 99, is also relevant in the present context:

3. Learned Single Judge and the Division Bench were absolutely right in applying the decision of this Court in *State of Punjab v. Renuka Singla* AIR 1994 SC 59 (para 8) and *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, and in declaring that this admission was illegal. The relevant passages of the above said judgments are as follows:

State of Punjab v. Renuka Singla AIR 1994 SC 59

The admission in Medical Course throughout India is governed by different statutory provisions including regulations framed under different Acts. During last several years efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter attempt is also apparent and discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations in respect of admissions of students.

State of Maharashtra v. Vikas Sahebrao Roundale AIR 1982 SC 1926:

Slackening the standard and judicial fiat to control the mode of education and examination system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.

In other words, the Supreme Court has observed that it is not possible for the Court to countenance invalid admissions which would lead to slackening the standard by judicial fiat to control the mode of education and examination system, and is detrimental to efficient management of education.

31. Before we part with the records, we note the submission of learned Counsel for respondent Nos. 3 to 6 that suspension of the then Director and the clerks, and criminal case against all concerned including those who made illegal payments, is in contemplation. Paragraph 47 of the supplementary counter affidavit is reproduced hereinbelow:

47. That the University Administration has considered the replies of the Course Coordinator and the Course Director and has found unsatisfactory and has decided to institute a criminal case against the Course Director, Course Coordinator and the other persons who are to be blamed for this reckless and illegal attempt of getting unsuccessful students admitted in the BBA Course of Patna College.

The University would be well advised to hand over the matter to the Cabinet (Vigilance) Department of the Bihar Government for investigation.

32. In conclusion, we are of the view that admission of 146 students were beyond the sanctioned strength of the BBA course. The same were obtained by fraud attributable to the Director-cum-Principal, Course Co-Ordinator, the parents and others who acted for the admitted candidates, and others. The students cannot be permitted to retain the benefits obtained by fraud. We, therefore, uphold the order dated 20.11.2008 (Annexure M), whereby admission of 146 candidates were declared null and void.

33. The writ petition is dismissed.