

(1999) 08 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30441 of 1999

Atul Kumar Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Uttar Pradesh State Universities Act, 1973 — Section 28(5)

Citation : AIR 2000 All 116

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Mahendra Pratap, for the Appellant; S.C., Dinesh Kakkar, Ashutosh Srivastava and S.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner had participated in the Combined Pre Medical Test (CPMT) examination held by the University of Roorkee for the year 1999. By means of this writ petition, he had challenged the validity of the said test conducted by the University of Roorkee on the (ground that it has been held in violation of the direction contained in the decision in the case of Tulika Ram v. State of U.P. in Wri Petition No. 418 (M/B) of 1998 decided on 15th Dec. 1998 (Reported in 1999 (2) All LJ 1045). According to him, the first paragraph of the direction provides that the Chancellor shall nominate the University which shall conduct the combine premedical test. For the purpose, the Chancellor shall constitute a Committee which shall consist of six members as mentioned therein and that no University shall be assigned that task for more than a year consecutively for which reason disclosed therein.

2. Mr. Mahendra Pratap, learned counsel for the petitioner contends that in this case for far as the first direction is concerned, there are three infractions. First that there was no notification issued by the State Government in terms of Section 28(5)(b) of the State Universities Act, 1973 empowering Roorkee

University to hold the test. The test held by the University of Roorkee is wholly without jurisdiction and void ab initio. Secondly that no committee was constituted consisting of the six members mentioned therein by the Chancellor and such Committee could have been consulted and as such the nomination of University of Roorkee could not be valid in view of the said direction. Third that the University of Roorkee had held the CPMT test in 1998 and as such it could not be assigned the task for the year 1999 in violation of the prohibition of holding the test consequently for more than a year. In support of his contention, he contends further that in view of the said decision containing the said direction, the provision u/s 28 Sub-section (5) and the notification issued under Clause (b) of Sub-section (5) of Section 28 are to be read in consonance of the said direction. Any Inconsistency between the direction and the said provision of law, the direction contained in the said decision would prevail. Any infraction of the said direction would render the whole test invalid and void, he then contends that though a news item was published in "Dainik Jagaran" that the question paper of CPMT 1999 was leaked out and yet no notice thereof was taken and the test was held on the basis of the leaked out papers. He had also alleged various infirmities and irregularities in the holding of the test. On these grounds, he challenged the test and had prayed for cancellation or quashing of the entire CPMT test 1999 with the direction for holding the test through a Medical University in the State of U.P. and also to direct an enquiry in respect of irregularities committed in course of the said test through Central Bureau of Investigation and also seeking a prohibition restraining the respondents from declaring the result of the said test.

3. Mr. S.N. Verma, learned counsel for the University of Roorkee on the other hand contends that the petitioner had participated in the test and was unsuccessful. In the meantime, the result of the test has been published. The writ petition was moved only about a week before the result was due to be published. The petitioner had never challenged the same at any point of time until a week before the result was due. On the other hand, he had participated in the test after having submitting his form on or before 27th May, 1999. The initial notification was issued on 7th Jan. 1999 and thereafter, on 20th Jan., even then it was not challenged earlier. He then contends that having participated in the test, it is not open to the petitioner to challenge the competence or the illegality in the selection and/or the process of selection after having been un-successful in the test. He relies on the decision in the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, . He has also pointed out from the material disclosed in the counter affidavit filed on behalf of the University as well as on behalf of the State that the decision to hold the examination was taken before the decision in the case of Tulika Ram (supra) was rendered and thus there was no infirmity. However, it is contended by him that so far as the other directions contained in paragraph 2 to 8 of the judgment have since been complied with. Since the decision was taken before the judgment was rendered, therefore, so far as paragraph 1 of the directions was concerned could not be complied with in view

of the impossibility of the situation. He contends further that a whole examination cannot be cancelled on the basis of some infirmities pointed out by a single unsuccessful candidate jeopardising the interest of the whole community. The petitioner cannot claim any locus standi to assail the said test on the ground of any illegality or irregularities only to assert his own individual right after having been unsuccessful in the test. The petitioner has not been able to point out any infirmity in the process apart from the alleged infraction of paragraph 1 of the direction which could lead this Court to come to a conclusion that there were irregularity and illegality, in the process of the test. Therefore, the writ petition should be dismissed.

4. Mr. Ashotosh Srivastava, learned counsel for the State had adopted the submission made by Mr. S.N. Verma assisted by Mr. Dinish Kakkar, counsel for the University of Roorkee.

5. I have heard the respective counsel at length.

6. It appears that the judgment in case of Tulika Ram (*supra*) was delivered on 14th Dec. 1998. In the counter affidavit on behalf of the University of Roorkee, it is stated in paragraph 5 onwards that the decision was taken to conduct the CPMT Examination 1999 through the University of Roorkee and the said decision was communicated to the Vice Chancellor of the University on 25th Nov. 1998 which is Annexure CA-1. Thereupon, on 28th Nov. 1998, the University had initiated action for conducting the said test. In a meeting held on 9th Dec. 1998, the terms and conditions for conducting the said examination was finalised. Where after the decision in the case of Tulika Ram (*supra*) was rendered on 15th Dec. 1998. The Government had issued notification on 7th January, 1999 prescribing the manner in which the said test would be regulated and the first notification for holding of the test was published in the newspaper on 20th January, 1999 which is Annexure CA-2. The details of the dates and particulars required for applying for the test were published on 22nd April, 1999 which is Annexure CA-3. In the said notification, it was provided that the sale of from should commence from 3rd May, 1999 till 24th May, 1999 and the last date of receipt of the application was notified as 27th May, 1999. The test was fixed on 11th July, 1999. The State Government had filed a SLP before the Apex Court against the decision dated 15th Dec. 1998 which was dismissed as withdrawn and thereafter, an application for modification of the order dated 14th Dec., 1998 was filed before the Lucknow Bench but no orders seem to have been passed on the said application as yet.

7. In this background, the point raised by Mr. Mahendra Pratap with regard to the provision contained in Section 28(5)(b) may be examined. The said provision provides that the admission to Medical and Engineering Colleges shall be regulated by such orders as the State Government may by notification make in that behalf. In the present case, it is alleged that the notification was issued on 7th Jan. 1999 In terms of Section 28(5)(b). Mr. Mahendra Pratap contends that the expression "the admission shall be regulated" includes the nomination of the

University as well. Whereas paragraph 1 of the direction contains a clause that the Chancellor shall nominate the University which shall conduct the Combined Pre Medical Test. In case the contention of Mr, Mahendra Pratap is accepted that the direction contained in the decision dated 14th Dec. 1998 shall prevail upon Clause (b) Subsection (5) of Section 28, in that event, the nomination of the University of Roorkee is to be made by the Chancellor and without the notification. Thus the initiation for the admission or nomination of the University is surely to be treated outside the scope as to how the admission is to be regulated. The expression "admission shall be regulated" means as to how the University of Roorkee after having been nominated would regulate the test for admission. The nomination of the University may be outside the purview and scope of such regulation of admission in terms of Clause B of Sub-section (5) of Section 28.

8. Be that as it may, the decision nominating the University of Roorkee was communicated on 25th Nov., 1998. Therefore, the decision must have been taken on or before 25th Nov., 1998. A judgment, unless intended specifically, cannot operate retrospectively. The decision was taken before the direction in paragraph 1 of the said judgment containing the direction came into being. By reason of the said decision, it is not provided that the decision already taken shall become void. It is a common knowledge that the conduct of the test requires quite large number of arrangements with accurate precision for which all steps are to be taken well ahead of time. It is alleged that about 10,000 candidates participated in the test for 2000 seats in whole of the State in the year 1998 whereas in the present year 80,000 candidates had participated in the test for the same number of 2000 seats in the whole of the State. The decision had been taken before the judgment was rendered. In as much as subsequently meeting was held on 9th Dec. 1998 when the terms and conditions for the test was finalised . Thus it was impossible for the Government to comply with the condition contained in paragraph 1 of the said direction. Even then after the said decision, the Chancellor has not exercised his jurisdiction to nominate-any other University or to cancel the nomination of the University of Roorkee nor the Chancellor had constituted the Committee of six members consisting of those persons mentioned in the said order which presuppose that the Chancellor had acquiesced or had confirmed the nomination of the University of Roorkee for the conduct of the CPMT 1999.

9. Thus it appears that for the purpose of nomination, a notification u/s 28(5)(b) of the said Act may not be necessary if the said Section is reconciled with the direction contained in paragraph 1 of the direction in the said decision.

10. In any event, the decision having been prospective in nature, it cannot operate retrospectively to negative the decision already taken and that too, having not been recalled by the Chancellor who was empowered to do it. So far as the direction that a University shall not be given the task for consecutive years to preclude the possibility of playing of vested interest is concerned, unless

it is shown that vested interest had come into play in the present test, it would not be desirable to apply the said condition so as to nullify the test held. Then again, this provision that consequently for two years, a University should not be entrusted for holding the test was to be interpreted with the object on which it was so included. This was a clause which cannot be treated to be mandatory in a circumstances as is obtaining in the present case. Though it might be so applicable in future in respect of test that might be held hereafter.

11. Then again the judgment being prospective in nature would operate from the date of its operation namely, 15th Dec., 1998. The consecutive year is to be calculated prospectively namely for the test to be held after the date of the judgment. The holding of the test prior to the said judgment cannot be reckoned or be taken into account. If the judgment operates prospectively in that event, after the present test for 1999 the University may not be nominated for consecutive two years. But the ratio decided in the said judgment will not preclude the holding the present test on the basis of a test held before the judgment was delivered. Thus it cannot be said in the facts and circumstances of the case that the University of Roorkee is entrusted to hold the test consequently for two years after the judgment is delivered. If for the purpose of determining the consecutiveness test held in 1998 is taken into consideration in that event, definitely it can be said that the judgment dated 15th Dec., 1998 is being set for retrospective operation. In the absence of any specific and clear indication in the judgment that it will apply retrospectively, the proposition as advanced by Mr. Mahendra Pratap cannot be acceded to. The prospectivity or retrospectivity of a judgment has to be determined on the basis of a cut off date namely, the date of the judgment dated 15th Dec., 1998. Thus the University of Roorkee cannot be said to have held two consecutive test after the decision is rendered.

12. That apart the State Government had filed a SLP against the said judgment which was ultimately withdrawn. The State Government had also filed an application for modification. Subject to the decision in the SLP or in the application for modification, the decision, that was taken before the judgment, had already proceeded. For such proceeding the University of Roorkee had no manner of responsibility. Once it is entrusted upon the University of Roorkee, it is not supposed to question the validity of the entrustment. So long it is entrusted on it, it has to carry on with the entrustment. It would be wholly an indiscipline on the part of the University if it had declined to proceed with it. It had no alternative but to proceed with the test unless restrained by the Court or prohibited by the State. The State had not prohibited the University to hold the test. Despite filing of the application, no order was obtained on the said application, is also true, but at the same time, the Court also did not prohibit it. The Court might not have time to advert to the issue but then Court having not adverted to the application for modification would not mean a prohibition. The holding of such test, is therefore, subject to the decision that might be taken in the said application for modification . In my view since the question is already pending before the Lucknow Bench in the application for modification, this Court

cannot decide the said question on the basis of an independent application. The decision arrived at in this case therefore, would be subject to the decision on the modification application if in case it is found by the Lucknow Bench that the reasoning given in this judgment cannot be agreed with. If the Lucknow Bench is of a different opinion and does not agree with the reasoning given herein in that event it would be open to it to take such decision as it might think fit and this decision and the test held by the University of Roorkee for the year 1999 would be subject to that decision.

13. But then in the present case, the test has been challenged by an individual unsuccessful candidate. In the case of Arun Kumar Shukla v. Chancellor, Allahabad University 1984 (1) UPLBEC 477 : 1984 All LJ 427 it was held that after being unsuccessful a candidate cannot turn round and challenge the selection. In the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , the Apex Court had taken the same view in paragraph 24 of the said decision. It was observed therein "moreover this is a case as to whether the petitioner in the writ petition should not have been granted any relief. He had appeared in the examination without protest. He filed the petition only when he had perhaps realised that he would not succeed in the examination. The High Court Itself has observed that setting aside of the result of examination held in the other districts would cause hardship to the candidate who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also . They were not responsible for the conduct of the examination."

14. In the present case, there is nothing to show that the petitioner appeared in the examination with protest. It is neither pleaded nor argued before this Court. At the same time among 80,000 candidates who had appeared in the test, 2000 candidates have been selected. If the result is cancelled those 2000 successful candidates would definitely suffer hardship. These successful candidates were not responsible for the conduct of the examination.

15. At the same time, a practical outlook and approach is to be taken. The society is not meant for law. On the other hand, law is meant for the society. Justice is to be done according to law. The word justice has a sacramental connotation. Justice to one if causes injustice of 2000 , unless it is shown that there had been glaring infraction of law beyond reconciliation, cannot be acceded to. It would cause not only hardship to the candidates but also to the State and the machinery for admission and the University. For the test not only numerous manpower has been exercised, heavy amount of funds have also been exhausted and numerous amount of exercise had been undertaken. If a test is undertaken once again then it would be wholly an impossible task and that too for a single individual who had participated in the process without any protest and had approached the Court at a belated stage, when perhaps he realised that he would not be able to succeed. If the test is cancelled and test is directed to be held once again it will take another six months or more and that will postpone

the session almost for one year and all these 2000 students would be losing one year and then the whole system of medical education shall get set back for one year. It is a common knowledge that discipline in the campus has eroded. Many of the curriculums of the University are behind schedule by reason whereof many students had been suffering loss of year or more in their educational career. It would be completely a set back to the whole medical educational process in the State itself. Up till now the medical education in the State is not behind schedule. The Court cannot put the clock back clogging the entire system and dislodging and destroying the whole process of imparting medical education in the State itself i.e. behind schedule at least for one year, The Court cannot be oblivious of the situation and the practical problems. It has to strike a balance. To become a reason of a disorder of a whole system would be an injustice to the society. Then again, the petitioner will not gain anything if the test is cancelled at the same time since he had been unsuccessful he will also not lose anything. If it could have been shown that the petitioner was not selected in the test though some of the candidates who were inferior in quality to him have been selected. In that event, his non-selection and selection of a candidate inferior to him would result into injustice, then the Court could have come to his aid and do justice by allowing him to be admitted. Cancellation of the test would not be doing justice to an unsuccessful candidate. A candidate is interested after all in the admission. He cannot claim to have interest in the cancellation of the test. He also cannot claim to have acquired any right to create disorder in the whole system simply because he has become unsuccessful.

16. Thus at the instance of an unsuccessful candidate, the CPMT Test held in 1999 cannot be cancelled on the ground of any illegalities that might have been urged by him, assuming but not admitting that such illegalities are apparent on the face of the record and are glaring, since he had participated in the test of his own volition without any protest in view of the decision in the case of Arun Kumar Shukla (supra) and Om Prakash Shukla (supra) cited above .

17. The question of leakage of the question papers are concerned, is the only ground, on which the petitioner can fall back upon in order to show the irregularity in the conduct of the test. Apart from this allegation, the petitioner has not been able to show to this Court any material in order to assert that there were irregularities in the conduct of the test. Though some vague allegations have been made but no materials or particulars have been disclosed. No specific allegations have been made. The allegations made in the pleadings are not sufficient even prima facie to establish that there were irregularities in order to issue certiorari to examine those irregularities by this Court.

18. Now with regard to the leakage of question that has been alleged in the pleadings to the extent that it was so published in "Dainik Jagaran" on 11th July, 1999, Lucknow edition wherein 22 questions in Botany which were alleged to have been leaked were reported to have been included in the CMPT paper. In paragraph 23 of the counter-affidavit on behalf of the University, it has been

asserted that after the question paper was open in the 3rd Session starting at 3 p.m. on 11th July, 1999 of the CMPT 1999 test, it was found that not even a single question published in the Dainik Jagaran was included in the actual question paper. This fact was acknowledged by Dainik Jagaran in their issue of 12th July, 1999. At the same time, no intimation was ever received either by the University or by the Secretary, Medical Education, Government of U.P. or the District Administration about the alleged leakage before the question papers were opened. On the other hand, in paragraph 24 of the said affidavit, it has been pointed out that Dainik Jagaran had carried a news report on 12th July, 1999 to the extent that the news carried in the previous day's edition (dated 11th July, 1999) to the effect that the CMPT 1999 question papers have been leaked out was found to be false when actual question papers were opened. The said news items have been annexed as Annexure CA 4 to the counter-affidavit which supports the contention of paragraphs 23 and 24 of the said counter-affidavit. Paragraphs 23 and 24 of the said counter-affidavit as has been dealt with in paragraph 48 of the Rejoinder Affidavit affirmed by the petitioner reads as follows --

"that the contents of paragraph Nos. 23, 24, 25 and 26 of the counter-affidavit, the required investigation by the independent agency, mere denial of charges will not be sufficient with required strict proof."

19. Overlooking the grammatical errors and mistake in the composition of the said paragraph, it appears that the petitioner has not denied the publication of the report on 12th July, 1999 in Dainik Jagaran stating the report dated 11th July, 1999 as false. He has also not asserted that the questions which were published in the newspaper were found to be common in the question papers of Botany that was opened. He has also not cited any other instance as to how there was a leakage. On the basis of the materials thus disclosed, it cannot be said that there was leakage of the question papers as has been sought to be argued by Mr. Mahendra Pratap with utmost vehemence. Thus on facts and the alleged irregularity also does not find support from any material disclosed before the Court. In the absence of any irregularity in the process of regulating the test, the petitioner cannot claim to have established his right to assail the selection that too, after he had participated without protest and had become unsuccessful.

20. For all these reasons, I am unable to persuade myself to agree with the contention raised by Mr. Mahendra Pratap as discussed above.

21. In the result, the writ petition fails and is, accordingly, dismissed. However there will be no order as to costs.