
(2010) 11 AHC CK 0208
In the Allahabad High Court
Case No : Special Appeal No. 808 of 2010

Ausaf Ahmad & others

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 12, 32(2)

Citation : (2010) 11 AHC CK 0208

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.

Notice on behalf of respondent 1 has been accepted by learned Assistant Solicitor General, on behalf of respondent no.2 notice has been accepted by Sri Vinay Bhushan, on behalf of respondent no.3 notice has been accepted by learned Chief Standing Counsel and notice on behalf of respondent no.4 and 5 has been accepted by Sri S.P. Shukla.

Heard Mr. M. Shahan, learned counsel for the appellants as well as Mr. S.P. Shukla, learned counsel for the Lucknow University and Mr. Vinay Bhushan for the N.C.T.E.

This special appeal challenges the order passed by the learned Single Judge dated 25th October, 2010 by means of which a bunch of writ petitions challenging the action of the University in not allowing the appellants to appear in the B.Ed. Entrance Examination, who have not secured at least 50% marks in the qualifying examination (graduation), was dismissed.

In short the State Government appointed the Lucknow University as Nodal Agency for conducting B. Ed. Joint Entrance Examination, 2010 (hereinafter referred to as the Entrance Examination). The Lucknow University on 4th February, 2010 issued an advertisement/brochure for conducting the Entrance Examination, wherein the last date for submission of examination form was fixed

as 20th March, 2010 and the examination was to be held on 5.5.2010. One of the eligibility criteria as mentioned in the advertisement/brochure prescribed for appearing in the Entrance Examination is as under:

"Candidates at least 45% marks either in the Bachelor's degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme"

In response to the said advertisement/brochure, the appellants have also submitted their candidature after completing the formalities and deposited the requisite fee. Later on, in pursuance to the correspondence between the State Government, namely, the Principal Secretary, Higher Education, Lucknow University/Nodal Agency and the National Council of Teachers Education (hereinafter referred to as the NCTE), the eligibility criteria for appearing in the Entrance Examination was changed prescribing minimum 50% marks in the qualifying examination as against 45% advertised. Consequently, the candidates who possessed the graduate or postgraduate degree or any other qualification equivalent thereto with minimum 50% marks instead of 45% marks, were only allowed to appear in the Entrance Examination.

The State Government with a view to facilitate the candidates, who could not obtain 50% marks in graduation or post graduation degree made a request by writing a letter on 28th April, 2010 to the Chairman NCTE for relaxing the requirement of 50% marks to 45% marks. The NCTE in response vide its letter dated 29th April, 2010 informed that in view of the provisions of National Council of Teachers Education Act, 1993 (hereinafter referred to as the NCTE Act) read with National Council of Teachers Education Regulations, 2009 (hereinafter referred to as the Regulations, 2009) notified in the gazette of India on 31.8.2009 by Clause 3(2)(a) in Appendix 4 framed as per Regulation 9 of Regulations 2009, provides "Norms and Standards for Bachelor of education programme leading to Bachelor of Education (B.Ed) degree the eligibility criteria for appearing in the Entrance Examination, which prescribes the following:

"3(2)(a) Candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme."

Thus, apparently the request for relaxing the minimum percentage of marks in the qualifying examination since was not accepted by the NCTE, the State Government in exercise of powers under subsection(5) of Section 28 of U.P. State Universities Act, 1973 and read with Section 21 of the U.P. General Clauses Act, 1904 issued a notification on 30th April, 2010 known as Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) Order (IXth Amendment), 2010 by which the eligibility criteria was fixed as 50% marks in the qualifying examination for appearing in the B.Ed. Entrance Examination.

Keeping in mind the aforesaid development and the statutory requirements of

having at least 50% marks in the qualifying examination, the Lucknow University/ Nodal Agency published an advertisement in the newspaper on 3/4th May, 2010 making it known that the minimum eligibility criteria to be possessed by a candidate in order to appear in the Entrance Examination, is 50% marks in graduate/post graduate degree from any University in India. In the advertisement dated 3/4th May, 2010 it was also mentioned that the Candidates, who had submitted their application forms but having secured less than 50% marks need not appear in the examination and their fee shall be refunded. The Entrance Examination was to be held on 5th May, 2010.

From the facts aforesaid, it is clear that the advertisement/brochure initially issued on 4.2.2010 did mention the percentage of last qualifying marks as 45% in violation and against the percentage so prescribed by the Regulations of 2009 framed by the NCTE. The aforesaid prescription of 45% minimum marks may be an act of oversight on the part of the State Government as it did not comply with the statutory requirement under the Regulations of 2009, and did not issue the required notification, because of which Lucknow University/Nodal Agency advertised the eligibility of 45% marks, which could not have been done, the fact remains that once the NCTE under its Regulations 2009 has prescribed the minimum eligibility educational qualification, neither the University nor the State would have any power to prescribe a different educational qualification, unless, of course, the permission to seek relaxation either by the State Government or by the University is granted by the NCTE.

Merely publishing or advertising incorrect eligibility criterion regarding the minimum percentage of marks in the last qualifying examination by the University against the criteria prescribed under Regulation, 2009 framed by the NCTE would not confer any right upon the candidates, who does not possess 50% marks in the last qualifying examination to appear in the Entrance Examination. It is also clear from the record and also from the judgement and order passed by the learned Single Judge that the State Government did take steps for protecting the candidates who had secured less than 50% marks but at least 45% marks in the qualifying examination and for that matter it approached the NCTE seeking relaxation but the NCTE did not respond in favour of the request made and thereafter the State Government modified its own notification and provided that minimum 50% marks, in the qualifying examination, is the eligibility for appearing in the Entrance Examination.

Learned counsel for the appellants himself says that the power to relax the norms regarding eligibility criteria with respect to reserved category candidate only lies with the State Government, meaning thereby he accepts that there is no power with the State Government to relax the criteria fixed by the NCTE with respect to general category candidates. The appellants do not belong to the reserved category.

The Regulations of 2009 have been framed in exercise of powers under Section 3 (2) of the NCTE Act, which act has been enacted by Parliament under Entry 66 of

List 1 of VIIth Schedule of the Constitution. That being so the State Government would have no power to lay down any such criteria or grant any such relaxation unless, ofcourse, provided under the Regulations itself.

The next plea of the counsel for the appellants is that in view of the Section 3 (3) of the Norms and Standard for Bachelor of Education Programme leading to B.Ed. Degree, the admission shall be made on merit on the basis of marks obtained in the qualifying examination or any other selection process as per the policy of the State Government/U.T. Administration and the University, therefore the prescription of 45% marks made in the qualifying examination, can be saved, by reading it to be the policy of State Government. Section 3(3), aforesaid, reads as under:

"The admission shall be made on merit on the basis of marks obtained in the qualifying examination or any other selection process as per the policy of the state government/U.T. Administration and the University."

A bare perusal of the aforesaid Clause makes it clear that it is a provision, which comes into effect after the Entrance Examination is held and the result is declared. The Provisions do not relate to the stage prior to the Entrance Examination but, they come into play, when admissions are made, even otherwise, we find that once the NCTE Regulations prescribed the eligibility criteria, the State Government can not relax it of its own. The plea requires no further attention.

The last plea of the appellants is that in pursuance of the orders passed by the High Court in some of the writ petitions allowing the candidates to appear provisionally in the examination, the University allowed all such candidates who had filled in the forms in pursuance of the advertisement issued on 4.2.2010 and were not possessed of 50% marks in graduation or postgraduation, and since they were allowed to appear in the examination, therefore, now their results cannot be withheld from being declared.

The advertisement dated 4.2.2010, as required by the notification in pursuance of the eligibility criteria laid down by the NCTE for the academic session in question, was not issued, through the Regulations of 2009 did prescribe the same.

The said apparent mistake was corrected by the State Government by issuing notification before the date of examination. The students had only applied in pursuance of the said advertisement, but before the examination could take place, they were duly informed by publication in newspapers that they need not appear in the examination and their fees will be refunded. Thus, by merely applying in pursuance of the advertisement earlier issued, they do not get any enforceable right in their favour to appear in the examination or to get their results declared, nor they could seek admission to B. Ed. course. The provisional permission itself speaks that it does not confer any right of declaration of result or for admission, as such a provisional appearance in examination would abide

the result of the writ petition. Since the writ petitions have been dismissed, no such claim can be enforced.

The special appeal is dismissed. No order as to costs.