
(2012) 03 CAL CK 0019
In the Calcutta High Court
Case No : Writ Petition No. 21226 (W) of 2009

Kaushik Saha and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Citation : (2012) 03 CAL CK 0019

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Ajay Roy, for the Appellant; Subrata Mukhopadhyay, Argha Banerjee, Ms. Basabi Rai Choudhury for the Respondent Nos. 2 and 3, Ms. Nandini Mitra, Sanjay Saha for the University, Mr. Abhijit Gangopadhyay and Ms. Supriya Dubey for the A.I.C.T.E, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Petitioner No. 1, Kaushik Saha is the son of the Petitioner No. 2, Ramesh Chandra Saha. They have prayed for quashing the Order dated 25.11.2009 (Annexure-P/12A at page 73) issued by the Respondent No. 5 (Vice-Chancellor, West Bengal University of Technology) whereby and whereunder he held that Registration to the Petitioner No. 1 cannot be granted. The grounds assigned in rejecting the Petitioner's prayer were as follows:- a) Kaushik Saha did not secure any rank in the Joint Entrance Examination for lateral entry- 2007 (JELET) as required and prescribed by the State Government vide G.O. No. 122-Edn.(T) dated 20.3.2007 in accordance with AICTE Regulations 1992 published in the Gazette of India dated 11.7.1992;

b) the Diploma holder candidates who seek admission to the Engineering Degree programme through lateral entry are fully aware of the Rules and Regulations pertaining to such admissions and therefore, "it cannot be appreciated" that Kaushik Saha was not aware of the eligibility conditions of lateral entry;

c) Kaushik Saha was allowed to sit in the examinations on provisional basis and

his Admit Card clearly mentioned that it would not confer any right upon him in the matter of publication of results which would be subject to obtaining regular Registration number.

The Petitioners have also prayed for an Order commanding upon the Respondents not to interfere or disturb his admission in the B.Tech (EC), Session 2007-10.

2. The Petitioners have stated that the Petitioner No. 1 (hereinafter and for the sake of convenience, referred to at places by name as Kaushik Saha and at other places as the Petitioner No. 2), is a student of final year (4th Year) 7th semester course of the B.Tech (Electronics and Communication Engineering [EC]) for the session 2007-10 which is being pursued in the Bengal Institute of Technology and Management (Respondent No. 2).

It has been stated that the said Respondent No. 2 conducts other courses from its campus under the approval of the All India Council for Technical Education (Respondent No. 8). The Institute (Respondent No. 2) is affiliated with the West Bengal University of Technology.

By an advertisement published in various parts of the country including Tripura, of which Kaushik Saha is a permanent resident, the Petitioners came to learn that the Respondent No. 2 intended to take admission of students in the B.Tech (EC) Engineering courses of study for the session 2007-10. Having completed his secondary examination in the year 2001 and also having completed a three-year diploma course in electronics and communication engineering conducted by the Department of Technical education, Govt. of Karnataka, Kaushik Saha applied.

Considering his academic qualifications and Certificates, he was offered admission in the 2nd Year (3rd Semester) of the said course. The Petitioner has stated in para-15 that he was given to understand that since he had already completed the three-year diploma course in Electronics and Communication Engineering conducted by the State Technical Board, Karnataka, he was therefore eligible for lateral admission in the B.Tech (EC) Engineering in the 2nd Year 3rd Semester conducted by the Respondent No. 2.

3. Not suspecting any foul play, Kaushik Saha accepted the offer of admission. On 27.7.2007, the Respondent No. 2 admitted him in the 2nd Year, 3rd Semester, B.Tech (EC) Course for the session 2007-10 against payment of admission and tuition fees as well as on payment of other charges. It has been stated that thereafter, he submitted his Migration Certificate in relation to the diploma which he had received in the State of Karnataka vide Annexure-P/4.

The Petitioners were informed by the Office of the Respondent No. 2 that all documents for registration had been duly forwarded alongwith registration fees to the West Bengal University of Technology and that its Office was pursuing the matter for collection of the registration Certificate.

4. In the meantime, Kaushik Saha continued his classes as he had been admitted

in the 2nd year 3rd Semester. He completed both the 3rd and the 4th Semester and appeared in the examination also.

5. The 5th Semester examinations were notified to be held in December 2008 in the campus of the Respondent No. 4 and the Controller of Examinations issued a provisional Admit Card (Annexure-P/6) in the name of the Petitioner No. 2 being Admit Card serial No. 0191007 showing his Registration number as TR-DK-042 of 2007-2008; Roll No. 5001 for the session 2007-2010 for the B. Tech Semester V examinations in electronics and communication engineering in the year 2008.

6. The Petitioner No. 2 then appeared in the 5th Semester examination on the basis of the said Admit Card but his results were not published. He was unofficially told that since his permanent registration was pending, his results could be published only on completion of the registration.

7. The Petitioners have stated that the Petitioner No. 2 had attended all classes and curriculum of the 5th, 6th and 7th Semester (Final Year) of the said course to the satisfaction of faculty and of the authority without any adverse report. Annexure-P/7 is a Certificate issued by the Institute certifying the aforementioned facts.

8. Since permanent registration was not coming through, Kaushik Saha filed a Representation on 18.4.2009. However the said Representation went unanswered. In the meantime, having completed his 7th Semester, he became entitled to appear in the final 7th Semester examination which was notified to be held in December 2009.

Forms were issued on 3.11.2009 to all students except to Kaushik Saha.

Upon enquiry, no satisfactory answer was given and therefore the Petitioner No. 2 protested vide his letter dated 3.11.2009 addressed to the Director of the Institute vide annexure-P/10.

9. Since Kaushik Saha was subjected to such predicaments, he therefore filed a Writ Petition before this Court which was registered as W.P. No. 19508 (W) of 2009. The same was disposed of on 20.11.2009 by another Hon''ble Single Judge with a direction upon the Vice-Chancellor to consider his Representation and pass a reasoned Order after hearing him within 48 hours from the date of receipt of a copy of this Order. It was thereafter that on 25.11.2009, the impugned Order was passed by the Vice-Chancellor informing him that he could not be registered.

11. Affidavit-in-Opposition on behalf of the Respondent Nos. 2 and 3 as well as a Supplementary Affidavit on their behalf have been filed. In the Affidavit-in-Opposition, the Registrar of the Institute (Bengal Institute of Technology and Management, Santiniketan) has, in para-3, referred to an order passed by another Hon''ble Single Judge, being the Hon''ble Mr. Justice Aniruddha Bose in W.P. No. 22512 of 2009 (Sri Rajib Bhowmik Vs. the Vice- Chancellor of West Bengal University of Technology and Ors.). The operative portion of the said Order has been quoted in para-3 of their Affidavit-in-Opposition and it reads as

follows:-

The Writ Petitioner will be regularized with the respondent no. 1 subject to deduction of proportionate number of seat in the session 2010-2011 from the Institute. Upto 4th semester of the petitioner will be treated as valid and the petitioner will sit for examination from 5th semester. The college will not charge tuition fees or any other fees from the petitioner for 5th and 6th semester. The University will publish result of the petitioner upto 4th semester within 15th November, 2010. (Quoted)

11. These Respondents have stated that this Order was communicated through a letter dated 5.10.2010 addressed to the Director of the Institute and it was shown to this Court on 19.8.2011 when the matter had come up. It is stated that on the basis of the Order dated 19.8.2011, the said Affidavit-in-Opposition was filed. These Respondents have also referred to an Order passed by the Hon''ble Supreme Court in a number of SLPs. A copy of the said Order was produced in Court on the basis of leave prayed for by them in para-5 of the said Affidavit-in-Opposition and it appears that it was passed in Civil Appeal No. 3191 of 2009 (SLP [Civil] No. 1871 of 2009) and other analogous cases wherein it was ordered as follows:-

ORDER

Delay condoned.

Leave granted.

By a common judgment, the Division Bench of the High Court of Calcutta, in a series of Writ Petitions, has set aside the admissions of the students in various Engineering colleges in the State of West Bengal. The Division Bench found that the admissions were improperly made and these students had not appeared for the counseling and that some of them were not fully qualified in the Entrance Examination. Aggrieved by the same, some of the students and institutions have filed these appeals before this Court.

Heard learned Counsel for the appellants and also learned Counsel for the Respondents.

It appears that these colleges take the stand that large number of seats have been lying vacant for the admissions to be made and the students be given admissions, as otherwise these sets would go waste. But we do not think that the plea taken by the colleges could be accepted. However, having regard to the larger interest of the students, we make the following order:

In the present appeals, the appellant-Engineering colleges had made admissions contrary to the A.I.C.T.E. regulations and guidelines of West Bengal Joint Entrance Examination Board as well as Central Selection Committee. In total, there are about 8 private Engineering colleges who had made 110 admissions of students who were not allotted to them by the counseling process. Since private

colleges cannot be permitted to make admissions on their own, the management quota for the next academic years i.e. 2009-10 and 2010-11 of their colleges shall reduce as to set off the effect of their admissions made by them in the academic year 2008-09 by entering fresh students as having been admitted in the management quota.

It is made clear that admissions would be given to only those students who have secured marks above the cut-off marks of both in the West Bengal Joint Entrance Examination and also in the All India Engineering Entrance Examination.

The colleges concerned are directed to file undertakings before this Court within a period of four weeks. Appeals are disposed of accordingly. No costs.

(K.G. Balakrishnan, CJI)

(P. Sathasivam, J)

(Dr. Mukundakam Sharma, J.)

New Delhi;

4th May, 2009" (Quoted from the photocopy of the Order that was produced in Court)

12. para-6, these Respondents have stated that the concerned Officer of the College who was in charge regarding admissions, ultimately left the college following steps taken by the College against the said Officer.

13. In the Supplementary Affidavit filed on 15.11.2011, these Respondents have stated that Kaushik Saha had duly appeared in the 3rd, 4th, 5th and 6th Semester examinations and the answer scripts of the said exams were lying with the West Bengal University of Technology. They have stated that the answer scripts of 7th and 8th semester examinations were, however, lying with the Bengal Institute of Technology and Management as they were returned by the University to the Institute without assigning any reasons.

14. An Affidavit-in-Opposition has been filed on behalf of the Respondent Nos. 4, 5 and 6 (University Authorities). While referring to the Rules and Regulations pertaining to the admissions, these Respondents have blamed the Institute for having admitted Kaushik Saha without following the prescribed procedures. They have also stated that Kaushik Saha never appeared in the common entrance test known as JELET and as such, he cannot be considered to be a bona fide student.

16. Upon a perusal of the facts and circumstances of this case, it is thus evident that Kaushik Saha has been sandwiched between "tweedledum and tweedledee" and is being "tossed about" as if he is a "tennis ball" being played on a "court" where the players are the University on the one side, and the College, on the other. For the fault of the college, which has played a wrong hand, should the student suffer? The answer would be an emphatic No !.

In the larger interest of the student and drawing inspiration from the order of the

Supreme Court, this Court has no hesitation to allow the Writ Petition by directing the concerned authorities to assign a permanent registration number and to do all acts that may be necessary to fulfil their obligations as model educational authorities for purposes of enabling the Petitioner No. 2 to carry on and complete his studies. They must take all such steps within a period of 3 (three) weeks from the date of receipt of a copy of this Order.

16. Before parting, this Court would however like to notice that there was no fault at all on the part of Kaushik Saha. If the Institute committed any irregularity then it was for the university to have taken such steps as were necessary and in accordance with law. In this context, the Order of this Court passed on 9.8.2011 becomes relevant to be remembered because on that day, both the University as well as the Council had submitted that Kaushik Saha was admitted directly by the Institute without asking him to appear in the necessary JELET 2007 examinations and it was therefore that registration was not given to him. Para 42 of the Writ Petition clearly indicates that Kaushik Saha successfully completed 3rd to 7th semester (final year) of the Course in question and became entitled to appear in the 7th semester. This part of the statement has not been denied by the Respondent Nos. 2 and 3 and so far as the Respondent Nos. 4 to 6 are concerned, all that they have said is at Para-28 where they have stated that "With regard to the statements contained in paragraph nos. 42, 43 and 44 of the said application, I deny all statements made therein except that which would appear from records." The fact that the Petitioner has completed 3rd to 7th semester stands confirmed by the statements made in para-4 of the Supplementary Affidavit filed by the Respondent Nos. 2 and 3.

Under the circumstances this Court has no option but to allow the Writ Petition, but after putting the institute to terms. Consequently, the Respondent Nos. 2 and 3 are directed to pay a sum of Rs. 25,000/= (Rupees Twenty five thousand) as Costs to the University for having taken admission without following their Rules and Regulations. At the same time, the Institute must also compensate the Petitioner for subjecting him to unwarranted litigation at an age when he should be left to pursue his studies diligently. Consequently the Institute must also pay him a further sum of Rs. 25,000/- (Rupees Twenty five thousand) as damages.

The Writ Petition stands allowed to the extents indicated above. Upon appropriate Application (s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.