

(2011) 01 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 72555 of 2010

Manish Kumar Srivastava and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Citation : (2011) 3 ACR 3035

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Judgement

A.P. Sahi, J.—These two writ petitions are in relation to the admission of students in the B-Ed course for the Session 2008-09 in Dulari Devi Degree College, Bindwala, Bhikampur, Deoria, which is affiliated to Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. These two writ petitions concern the fate of 51 Petitioners, who have preferred the second Writ Petition No. 72555 of 2010 praying that the order of the State Government dated 14th October, 2010 be implemented and the management of the institution be commanded to acknowledge the Petitioners as valid students and further direct the University to hold the examinations of the Petitioners in view of the decision taken by the State Government. The same decision of the State Government has been assailed by the management in Writ Petition No. 70199 of 2010 contending that the order of the State Government prejudices the cause of the institution, inasmuch as, the admissions are sought to be made in the Session 2010-11 in relation to the same students in terms of the decision of the High Court in Writ Petition No. 677 of 2010 decided on 3rd July, 2010, whereas the institution has already proceeded for counselling of fresh students in the Session 2010-11. According to the management this would result in a contradictory position, inasmuch as if the seats for the Session 2010-11 are to be filled up through fresh counselling then in that event any admission under the order dated 14th October, 2010 would exceed the intake capacity of the institution which would be contrary to the NCTE norms.

2. Learned Counsel for the management submits that on the one hand students who are Petitioners in Writ Petition No. 72555 of 2010 have filed a contempt petition and are pressing the refund of the fees as well as other benefits under the judgment dated 3rd July, 2010 and on the other hand, the State Government is compelling the institution to take their admissions. The State Government, therefore, has passed the order dated 14th October, 2010 oblivious of the aforesaid complex situation and, therefore, the impugned order deserves to be set-aside. It is also contended that so far as the institution is concerned, if the order dated 14th October, 2010 is directed to be complied with then in that event, the Petitioner institution cannot be compelled to refund the fees. Inasmuch as if the students had been admitted to some other institution as per the directions dated 3rd July, 2010, they would have to pay the said fees and accordingly there is no occasion for the institution to refund the same, if the order dated 14th October, 2010 is to be maintained.

3. Sri Rizwan Ali Akhtar, learned Counsel for the National Council for Teachers Education points out that for the Session 2008-09, the issue has been clarified in the judgment dated 3rd July, 2010 and it is evident that for the said session, the National Council had not granted any recognition to the institution. He, therefore, submits that the institution cannot claim any benefit so far as that session is concerned, even though the students may be directed to be adjusted as there was no fault on their part.

4. Sri B.D. Madhyan, learned Senior Counsel for the University submits that the academic session 2009-10 had been declared a zero session and so far as the students are concerned, this Court in a Division Bench judgment in Special Appeal No. 1216 of 2010 and 1223 of 2010 has already taken a decision allowing the students to appear in the examinations treating their admissions to be valid.

5. Learned Standing Counsel with the help of the affidavit filed by Mr. Vimal Kishore Gupta, Special Secretary, Higher Education contends that the direction of this Court dated 3rd July, 2010 so far as it relates to the students, has not been stayed, in the Special Appeal which has been preferred against the same. He invited the attention of this Court to the interim order dated 19th July, 2010 and submits that it is in order to respect the said directions of the Special Appellate Bench that the order of the learned Single Judge dated 3rd July, 2010 was sought to be enforced through the order dated 14th October, 2010. He, therefore, submits that in view of the aforesaid position that has arisen a direction can be issued for the purpose of holding of the examinations allowing the students to pursue their course of B-Ed. In the background aforesaid, learned Standing Counsel further submits that so far as the State Government is concerned, it is only on account of the direction of this Court dated 3rd July, 2010 that the readjustment order has been passed which does not prejudice either the cause of the management or the students and he, therefore, submits that in view of the aforesaid facts, the order dated 14th October, 2010 be maintained.

6. Having heard learned Counsel for the parties, it is evident that the judgment dated 3rd July, 2010 is under challenge in Special Appeal No. 1119 of 2010. The Petitioner in both these writ petitions would, therefore be bound by the ultimate directions to be issued in the said Special Appeal. However, for the time being since the remaining directions in the judgment dated 3rd July, 2010 have not been stayed, therefore, the students are entitled for the benefit of the judgment of the learned Single Judge subject to any final order be passed in the Special Appeal.

7. The background of the case, therefore, clearly indicates that for the Session 2009-10, the National Council gave recognition only on 31st August, 2009. For the Session 2008-09 there is no recognition. However, the direction of the learned Single Judge permits the students to pursue their studies.

8. It is to be noted at this juncture that five writ petitions had been decided by the judgment dated 3rd July, 2010. One of the colleges namely Lal Bahadur Shastri Smarak (P.G.) College, Anand Nagar Mahrajanj, went up in appeal along with the Petitioners of Writ Petition No. 4192 of 2010. These two appeals filed on behalf of the management of a different college and by Bal Govind Patel and others who are students of different institutions, were allowed by the judgment and order dated 12th August, 2010. The judgment in the aforesaid two appeals were however limited only in respect of the case of Lal Bahadur Shastri Smarak (P.G.) College, Anand Nagar Mahrajanj, where a finding was recorded that there was a recognition of the National Council in favour of the institution w.e.f. 11.06.2007. Thus in that case, the Session 2008-09 was clearly covered by the recognition order which makes the same distinguishable from the case of the present Petitioners. The aforesaid decision, therefore, has no application on the facts of the present case.

9. Coming to the contentions raised in relation to the complex situation having arisen so far as the contempt proceedings are concerned, suffice it to say that the matter came up before the Division Bench in a Special Appeal where the University gave an undertaking that in the event the petitions succeed or orders are passed by this Court, the University shall hold special examinations. The said order of the Division Bench dated 10.11.2010 as corrected on 12.11.2010 was passed in the appeal filed by the Petitioner-committee of management in Special Appeal (D) No. 1018 of 2010.

10. It is, therefore, clear that so far as the fate of the students is concerned that was protected on the undertaking given by the University and the appeal was disposed of.

11. The affidavit which has been filed by Sri Vimal Kishore Gupta today recites that in the event, these students would have been distributed in other institutions apart from the Petitioner-institution then the fee that was payable might have been demanded and the fee has not been refunded by the Petitioner-institution so far. This in my opinion cannot be the basis for passing of an order

which does not conform to directions dated 3rd July, 2010. The directions of this Court dated 3rd July, 2010 was clearly to the effect that the State Government shall make arrangement of admissions in any affiliated college within a period of two months after calling for the list of such privately affiliated colleges in the State. The State Government while passing the order dated 14th October, 2010 has not undertaken this exercise and has simply diverted the students back again to the same institution thereby creating a complicated situation. Accordingly, the directions dated 3rd July, 2010 having not been complied, the order dated 14th October, 2010 cannot be sustained. It is hereby quashed. The State Government shall now proceed to assess each and every order passed by this Court and thereafter proceed to comply with the directions dated 3rd July, 2010 making it clear to the students that the same shall be subject to any final order being passed in Special Appeal No. 1119 of 2010. The students concerned shall get the benefit provided there is no other adverse order in Special Appeal No. 1119 of 2010. The admissions shall be finalized against the intake capacity of seats in any such affiliated institution further subject to the condition that it shall be done not beyond the norms prescribed by the National Council for Teachers Education. For this, the State Government will have to undertake the exercise of locating the seats wherever they are available in these institutions for the purpose of complying with the directions dated 3rd July, 2010. The said exercise shall be completed within six weeks from today as the order has been passed in the presence of Government Officials including Sri Vimal Kishore Gupta, Special Secretary.

12. Both the writ petitions are accordingly disposed of with the aforesaid direction subject to any decision to be taken in Special Appeal No. 1119 Of 2010 as noted above.