
(2011) 03 AHC CK 0387

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12838 of 2011

Naushad Ali Rana

APPELLANT

Vs

Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Indian Medicine Central Council Act, 1970 — Section 36

Citation : (2011) 4 ADJ 386 : (2011) 2 UPLBEC 932

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The Petitioner is a student of Post Graduation Speciality Course Hifz-e-Sehat in Unani Medicine in the Aligarh Muslim University. The Petitioner was admitted in the Session 2009-10 in the said course which is of three years. After having obtained 19th Rank in the Entrance Test, the Petitioner was granted admission and has undergone the first year of his course. He again attempted a second time in the Entrance Examination for a fresh admission in the session 2010-11. This time the Petitioner succeeded in getting 6th rank in the Entrance Test and has thereafter made a request to the University to cancel his earlier admission of 2009-10 and to allow him to pursue his post graduation course against the seat to which he is entitled under the fresh Entrance Test of 2010-11.

2. The University has resisted the claim of the Petitioner on the ground that the Petitioner had already given an undertaking at the time of the admission in the previous session which is to the following effect:

1.I undertake that as I am admitted to the above stated course in the Session 2009-10 on 30/03/2010 thereafter, I shall not seek admission to any other course including P.G. Course in Unani Medicine any where not only this year but in the coming years till full duration of course.

2. That I assure and further undertake that I shall complete three years duration of this course and I shall not leave my studies midway during the course for the purpose of taking admission to any other discipline of Unani Medicine in A.M.U. Or in any other institution in India.

3. That I further undertake that in case I would find breaching this undertaking I shall be liable to punishment under disciplinary rule for concealment of facts. My admission to the course shall be automatically get cancelled and decision of the University in this regard shall be final and no litigation in this regard shall be tenable.

3. On the said undertaking the Petitioner has been denied the cancellation of his previous years admission, and admission in the current session 2010-11.

4. Learned Counsel for the Petitioner submits that in view of the provisions as framed by the University in its Ordinances that has been extracted in Paragraph 9 of the writ petition, the said rule may be applicable after a candidate passes out his course but the same would not apply when a candidate chooses to drop in one and join another course. It has been further urged that several such students including one Mr. Sallalah were extended the said benefit in the session 2009-10 and therefore the Petitioner should also be permitted to pursue his course against the seat to which he is entitled in the current session.

5. Learned Counsel further invited the attention of the Court to Paragraph 2.10 as referred to in Paragraph 10 of the writ petition to contend that the said rule as contained in the Information Brochure permits such a change, and in view of that, the denial made by the University is unjustified and the Petitioner even otherwise is ready to refund the fees, therefore he should be extended the benefit of pursuing his studies according to the results of the Entrance Examination in the current session 2010-11.

6. For ready reference Paragraph 2.10 is quoted herein below:

2.10 Absence and Name Removal

The name of a student of PG Course (MD/MS) in the Faculty of Unani Medicine may be removed on the following condition:

(a) On his/her own request in writing to the Dean, Faculty of Unani medicine submitted through the Chairman of the Department concerned subject to the condition of the refund of stipend and submission of a certified proof of valid reason for leaving the course.

(b) On account of non-payment of arrears, by the Dean, on the recommendation of the Provost of Hall where the student is residing after being given appropriate notice and reasonable opportunity to pay the fees/ dues of the University/Hall of residence.

(c) On account of gross misconduct by order of the Competent University Authority.

(d) On account of continuous absence from the class or Clinical/Lab duties without obtaining prior leave, for one month, the Chairman of the Department will give a notice to the student at his/her residential or permanent address by registered post asking him/her to resume his/her duties within a period of 15 days from the date of

7. Replying to the aforesaid submissions Smt. Sunita Agrawal for the Respondent - University contend, that the undertaking is clear and unequivocal and therefore the Petitioner cannot be permitted to resile from the same. She however submits that the said undertaking has its foundation in the Notification issued by the Central Council of Indian Medicine in exercise of the powers u/s 36 of the I.M.C.C. Act, 1970 and in supersession of the 1979 regulations. She submits that the aforesaid notification categorically provides in Regulation 9 (VI) that a candidate who has been admitted in any post graduation course shall not be allowed to switch over or seek admission in any other subject. The said clause is quoted herein below for ready reference:

Clause 9 (VI): A candidate who has been admitted in any subject of Post Graduate Degree Course, shall not be allowed to switch over or seek admission in any other subject of Unani medicine for Post-Graduate Course after a period of 6 months from the date of admission.

8. It is further submitted that Clause 2.10 as relied upon by the Petitioner cannot be read in isolation and which has to be read alongwith Clause 2.7 (i) which would leave no room for doubt that the contention raised by the Petitioner cannot be accepted. It is further contended that no such student has been given admission in the current session. Even assuming for the sake of the argument that the benefit was given in the previous years, the same cannot enure to the Petitioner as equality in illegality cannot be pressed into service in matters relating to the admission on the ground of violation of Article 14 of the Constitution of India in view of the various decisions of the Apex Court and of this Court. She therefore submits that the writ petition has no merits and should be dismissed.

9. Having heard learned Counsel for the parties, the Regulations framed by the Central Council of Indian Medicine will have a binding effect and therefore Regulation 9 (VI) as quoted herein above will prevail in such matters. According to the said provision no candidate who has taken admission in a Post Graduate Degree Course shall be allowed to switch over or seek admission in any other subject after a period of six months. The Petitioner admittedly had been admitted in the session 2009-10 and having pursued his entire course for one year and having succeeded in the subsequent examinations, the Petitioner now contends that he should be permitted to switch over and seek fresh admission. In the opinion of the Court, the aforesaid provision does not permit so and therefore the claim of the Petitioner cannot be accepted.

10. Apart from this, the undertaking given by the Petitioner also does not allow

him to resile back from the same.

11. The submission of the learned Counsel for the Petitioner relying on Paragraph 2.10 of the brochure has simply to be noted for being rejected, inasmuch as, the said condition in the brochure does not at all apply in the present case if it is read with the Regulation 2.7 (I). As a matter of fact the Petitioner was not even eligible to appear in the second entrance examinations.

12. Accordingly, there is no merit in the petition. It is hereby dismissed.