

(1992) 12 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8329 of 1992

Pradeep Kumar Arora

APPELLANT

Vs

Vice Chancellor Meerut University and Others

RESPONDENT

Date of Decision : 07-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (1993) 2 AWC 952 : (1993) 2 UPLBEC 1019

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The Petitioner has filed this writ petition praying that a writ of mandamus be issued to the Respondents to allow him admission in M.Ed. course 1991-92 in Meerut Collega Meerut Parties have exchanged affidavits and therefore, the writ petition is being disposed of finally at the admission stage.

2. The case of the Petitioner, in brief, is that Meerut College is an institution affiliated to Meerut University and it imparts education upto Post Graduate level; that the Petitioner applied for admission in M.Ed. course and submitted an application for that purpose in the University; that the University recommended his name for admission In Meerut College; that the Petitioner approached the Head of the Department of Education in Meerut College who asked for a report from the Proctor of the College; that the Proctor gave a report that the Petitioner's name was In the list of candidates "not to be admitted"; that thereafter the Chairman of the Admission Committee refused to admit the Petitioner. The case of the Petitioner further is that the State Government has issued an order on May 5, 1987 in exercise of powers conferred by Section 28(5) of State Universities Act, 1971 (hereinafter referred to as the Act) and in accordance with the said order the Principal has no power to refuse admission to any student once his name is recommended by the Vice Chancellor of the

University.

3. A counter-affidavit has been filed on behalf of the Principal of the Meerut College and the case of the said Respondent is that there were reports against the conduct of the Petitioner. The Petitioner is an Indiscipline student and the District Magistrate Meerut had given report on August 6, 1986 and October 15, 1987 regarding those students whose admission in the college was likely to disturb the academic atmosphere of the institution and was likely to create an atmosphere of lawlessness. The name of the Petitioner was mentioned at sl. No. 3 in the aforesaid list. A list was also prepared in the Meerut College regarding those students whose presence was likely to give rise to indiscipline and disturbance of the academic atmosphere of the Institution and the Petitioner's name found place in the said list. In January 1986 an order u/s 144 Code of Criminal Procedure was passed by a competent Magistrate whereby the Petitioner and some other students were restrained from entering the premises of Meerut College and some other Institutions. It was on account of these reasons and to maintain proper academic atmosphere in the institution and In the Interest of students studying therein that the Principal decided not to admit the Petitioner in Meerut College. It is further pleaded that the list of the students sent by the University for admission in M.Ed. course is recommendatory in nature, and the Principal of the Institution has still a discretion in the matter, if he is of the opinion that a candidate is not a fit person who should be granted admission.

4. Learned Counsel has submitted that State "Government has issued an order on May 5, 1987 in exercise of powers conferred by Section 28(5) of the Act and in accordance with the said order the Petitioner is entitled to be admitted In Meerut College as his name was recommended by the Vice Chancellor and the Principal has no right or authority to refuse to grant admission to him. A copy of this order has been filed as Annexure-to the writ petition. Learned Counsel has drawn attention to paragraphs 4 12 (3), 13 (2). 14 (c) and 13 of the order. Para 12 (3) provides that Principal will have a right not to grant admission to a candidate even though his name finds place in the merit list, if ,the District Magistrate has given a written report against him or he is being prosecuted for some criminal offence or he has been convicted in some criminal case, or he has been expelled for two or more years by the University on account of use of unfair means in examination, but for this purpose the Principal will have to obtain written permission from the University. It is contended by the learned Counsel for the Petitioner that as in the present case the Principal of the college had not obtained prior written permission from the University, he had no authority to refuse admission to the Petitioner.

5. In my opinion the contention raised by the learned Counsel for the Petitioner can not be accepted. There is no allegation in the writ petition that before refusing to grant admission to the Petitioner, the principal had not taken permission from the Vice Chancellor, This permission need not be for each individual student. Annexure-1 to the counter-affidavit is list prepared by the

office of the Principal of the Meerut College on October 29, 1991 and It contains names of those persons (category "A") who were not to be admitted In the college at all and the name of the Petitioner finds place in the said category. It is quite possible that this list was prepared by the Principal after taking permission from the University. In absence of any clear and specific allegation in the writ petition to the effect that no permission was taken by the Principal from the University before refusing admission to the Petitioner, it is not open for him to contend that there has been a violation of para 12(3) of the Government-Order. Learned Counsel has referred to paragraphs 8, 9, 10 and 11 of the writ petition in this regard. I have carefully perused the averments made in the aforesaid paragraphs of the writ petition and in my opinion the necessary factual foundation has not been laid in the aforesaid paragraphs of the writ petition which may enable the Petitioner to contend that there has been a breach of para 12 (3) of the Government Order. Faced with the, difficulty, learned Counsel for the Petitioner has referred to para 8 of the rejoinder affidavit and also to a letter dated March 7, 1992 sent by the Vice Chancellor to the Petitioner. It is not open to the Petitioner to allege new facts in the rejoinder affidavit. The letter of the Vice Chancellor has been sent in reference to the Petitioner's application dated February 28, 1992. The copy of the aforesaid application has not been filed. In case the Petitioner wanted to rely upon the aforesaid letter of the Vice Chancellor and wanted to plead some new facts, he should have sought the permission of the court to file a supplementary affidavit and then the Respondents would have got an opportunity to file a reply thereto. It will not be proper to rely upon those facts and documents which have been brought on record for the first time through the rejoinder affidavit as the Respondents has got No. right to file a reply to the same.

6. Sri Pankaj Mittal, learned Counsel for the Respondents has further contended that the merit list sent by the University in accordance with the Government Order is merely recommendatory in nature and the final authority either to grant admission or to refuse admission still vests with the Principal of the Institution. Sri Mittal has submitted that the merit list for the purpose of admission is prepared by the Vice Chancellor on the basis of academic record of a student. He has neither any material nor it is possible for him to know about the other details of a candidate, The primary duty of a Principal of the institution is to maintain proper academic atmosphere and if he is of the opinion that the admission of a student would disturb the academic atmosphere of the institution, he has the right to refuse to admit him. I find the submission raised by the learned Counsel well founded. Sub-clause (5) of Section 28 of the Act reads as follows:

Notwithstanding anything contained in any other provisions of this Act, admission to Medical and Engineering Colleges and to courses of Instruction for degrees in Education or Ayurvedic and Unani Systems of medicine (including the number of students to be admitted) shall be regulated by the orders (which if necessary may be with retrospective effect, but not effective prior to January 1. 1979) as the State Government may by Notification make in that behalf:

provided that no order regulating admissions under this Sub-section shall be Inconsistent with the rights of minorities in the matter of establishing and administering educational institutions of their choice.

7. A perusal of the section will show that it confers power on the State Government to issue orders to regulate admission to Medical, Engineering Colleges, or for degrees in Education, or Ayurvedic and Unani System of Medicines. Regulate means to bring under the control of law or constituted authority. Other things being equal, the Principal certainly can not pick and choose and has to proceed in accordance with the merit list prepared by the Vice Chancellor for granting admission to students. However, the Government Order does not in any manner affect the general power possessed by a Principal of an institution to take such steps as he deems necessary to maintain a proper academic atmosphere in the institution. If a Principal is bonafidely of the opinion that the presence of a particular student, looking to his past conduct and general reputation, would seriously affect the academic atmosphere and jeopardize the teaching in the institution affecting the career of all the students, he certainly has the right to refuse to grant admission to such a student it is not possible to lay down exhaustively the situation under which a student may be refused admission. Take the case of a student who may be suffering from a deadly and a highly contagious disease. Should the Principal still grant him admission, seriously affecting the health of all the students, merely because his name has been recommended by the Vice Chancellor on the basis of his academic record. In my opinion, the Principal would be within his right to refuse to grant admission to him. I am, therefore, deeply of the opinion that the Principal of an institution has discretion in the matter and he can refuse to grant admission to a student even though his name has been recommended in accordance with the Government Order. However, this discretion should not be exercised arbitrarily, but should be exercised bonafidely in order to maintain proper academic atmosphere in an institution and on objective considerations. The material on record show that an order was passed in January, 1986 by a competent Magistrate u/s 144 Code of Criminal Procedure whereby the Petitioner was restrained from entering the premises of Meerut College and University and some other institutions in the city of Meerut. The District Magistrate of Meerut had also given reports on August 6, 1987 and October 15, 1988 to the effect that adverts reports had been received against the Petitioner and his admission in an institution could give rise to a serious law and order problem. In my opinion, there was sufficient material on record which showed that the decision of the Principal not to admit the Petitioner in Meerut College is not arbitrary, but is based upon sound considerations.

8. Learned Counsel has submitted that no opportunity of hearing was given to the Petitioner by the Principal before refusing to grant admission to him. He has placed reliance upon *Dinesh Kumar v. Principal Moti Lal Nehru Medical College* 1985 (2) UP LB EC 1945. in support of his submission. In this case Dinesh Kumar was granted admission to a diploma course in Orthopedics in Allahabad Medical

College but subsequently his admission was cancelled by the Principal on the ground that he had obtained admission in M.S. Course in Gorakhpur Medical College. It was on these facts that this Court took the view that the admission once granted to a student could not be cancelled without giving an opportunity of hearing. The present is not a case of cancellation of admission granted to a student. The Petitioner has yet to get admission in the College. It is also not a case where any disciplinary action is being taken or same punishment is being imposed upon a student. No opportunity of hearing is required to be given if the Principal declines to grant admission to a student.

9. It is well settled that in absence of allegations of bias or malafide courts of law should not lightly interfere with the decision of Academic Bodies (See *Dr. J.P. Kulshrestha v. Chancellor Allahabad University* AIR 1980 SO 2141 and *Jawaharlal Nehru University Vs. B.S. Narwal*, Recently in *Controller of Examinations v. G.S. Sunder JT 1992 (4) SG 204*; the Supreme Court has observed as follows in para 10 of the report:

One thing must be put beyond doubt, in matters of enforcement of discipline this Court must be very slow in interference, after all the authorities in charge of education whose duty is to conduct examination fairly and properly, know best how to deal with the situations of this character. One can not import fine principles of law and weight the same in golden scales.

10. I have no reason to doubt that the decision of the Principal not to admit the Petitioner has been bonafidely taken in order to maintain discipline and proper academic atmosphere in the college and therefore it will not be proper to interfere with his decision.

11. There is another aspect of the matter which is also relevant for decision of the present writ petition. It is averred in counter-affidavit that the Petitioner had simultaneously applied for admission in M.Ed. course in three different institutions which are all situated in Meerut City namely, Meerut University, Meerut College, and N.C. College. It appears that his name was recommended for admission by the Vice Chancellor in all the three institutions. The Petitioner took admission both in Meerut University and N.C. College, Annexure-6 to the Petitioner is a letter dt. March 27, 1992 of the Deputy Registrar of the University to the Principal of the Meerut College, wherein it is mentioned that the Petitioner has taken admission and has deposited fee and Annexure-5 is a letter dt. March 24, 1992 to the Principal of the N.C. College wherein it is mentioned that the Petitioner took admission in the college and deposited fee on Feb. 7 1992. In para 11 of the rejoinder affidavit, this fact is admitted that the Petitioner got admission in the aforesaid institution in M.Ed. course and he is pursuing his studies in the N.C. College, it is therefore, clear that the Petitioner has got admission in the same course in which he is seeking admission in Meerut College and that he is pursuing his studies in N.C. College since February 1992. The Petitioner is not likely to suffer any injury much less a serious injury if he is not admitted in Meerut College. It is a well settled principle of law that powers under

Article 226 of the Constitution are purely discretionary in nature and such a discretion should not be exercised unless substantial Injustice has been caused or is likely to be caused. On the facts and circumstances of the present case, I am clearly of the opinion that no serious injury has been caused to the Petitioner by not granting him admission in the Meerut College and it will not be a sound exercise of discretion to issue a writ of mandamus at this stage when the academic session has started long back. Learned Counsel for the Petitioner has placed reliance on Dr. Vijay Tyagi v. Principal L.L.R.M. Medical College 1986. UP LB EC 255; in support of his submission that merely because he has got admission In another College It should be No. ground for refusing him relief in the present writ petition. In the case cited by learned Counsel, the Petitioner was pursuing a diploma course in pathology but wanted admission in diploma course in Obstetrics and Gynecology which is a different course. The Petitioner being a lady a diploma course In Obstetrics and Gynecology was certainly more useful and advantageous to her. In the present case the Petitioner is pursuing the same course of study but in a different college situated in the same city. Therefore, the authority cited by learned Counsel can be of No. assistance to him.

12. In view of the discussions made above, the writ petition lacks merits and is accordingly dismissed. There will be No. order as to costs.