

(2009) 07 AHC CK 0228
In the Allahabad High Court

Preeti and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0228

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—This case was taken up as fresh by me during Summer vacations on 22.6.2009. In view of the urgency of the matter learned Counsel for the respondent-University was directed to file counter affidavit immediately. Arguments were heard on two or three days and were concluded on 26.6.2009 and judgment was reserved. On 23.6.2009 the following order was passed on the order sheet:

Put up tomorrow at 2 PM.

Learned Counsel for the respondent university assures the court that by tomorrow all the necessary records would be available with him to show to the Court.

In case it is found that petitioners are entitled to appear in the examination then Court will direct respondents to hold special examination for the petitioners. It may be mentioned that two papers are already over. Learned Counsel for the respondent University has also stated that in another similar matter direction was given to permit the petitioners of the said writ petition to appear in the examination. However, due to paucity of time those students could not be permitted to appear in the examination and an application in the said writ petition has been filed on behalf of the university to permit the university to take separate examination of those students.

2. Heard learned Counsel for the parties.

3. This writ petition has been filed by 10 students who claim to have been admitted in B.Ed. Course for the session 2005-06 by Sri Ghanshyam Dubey Degree College Suriava, Sant Ravidas Nagar (Bhadohi), respondent No. 4. The case of the respondent Nos. 2 and 3 Vice Chancellor and Registrar of Veer Bhadur Singh Purvanchal University with which the college in question is affiliated is that they were in fact not admitted in the session in question and only after concession made by the university before the Supreme Court (op cit) for taking the examination of B.Ed. Students of the Colleges affiliated with it, the petitioners falsely started asserting that they were in fact admitted in 2005-06 session.

4. In nutshell the controversy is that for the session in question the college in question was permitted to admit 100 students. It sent a list of 100 students alleged to have been admitted, however, the university accepted the case of 90 students but not of the petitioners who are 10 in number.

5. Technical education in U.P. by private unaided colleges is in a mess. The supreme Court has repeatedly held that education is not and should not be a business. This is a laudable proposition. However, the flip side of the coin is the stark reality that imparting education has become most lucrative business. The Courts alone can not cure this malaise.

6. The supreme Court in several cases including P.A. Inamdar and Others Vs. State of Maharashtra and Others, held that admission in private unaided affiliated and recognised technical colleges should be made on the basis of combined State level entrance test. However, for admission in technical courses in U.P. particularly in B.Ed. Course individual colleges have been constantly admitting the students on what basis only they may know. However, sometimes they assert that they do it on the basis of entrance test conducted by each of them independently and separately. Ultimately, the matter was decided by full bench of this Court. Through judgment dated 31.3.2008 passed in writ petition No. 24863 of 2007 connected with other petitions claim of self financing institutions of their right to admit the students on the basis of entrance test conducted by each institution independently and separately was rejected. Special leave petitions against the said judgment were filed before the Supreme Court, one of which being SLP (Civil) No. 10872 of 2008. In an affidavit filed by Special Secretary Higher Education Government of U.P. in the aforesaid SLP It was stated in para 5 as follows :

That in the instant matter pertains to academic session 2005-2006 in respect of private unaided colleges Veer Bahadur Singh Poorvanchal University. Such colleges have admitted 4510 students without counselling.

7. Ultimately, all the S.L.Ps. Were dismissed as withdrawn by the following order passed on 23.2.2009:

Heard learned Counsel for the parties.

The stand of the State of Uttar Pradesh and the Universities is that they are going to hold examination for the students admitted in 2005-2006 of Purvanchal Vishwavidyalaya and Anr. 2006-2007 of Agra and Meerut Universities. In view of this stand, learned Counsel appearing on behalf of the petitioners are permitted to withdraw these petitions and the same are, accordingly, disposed of leaving the question of law open to be decided in an appropriate case.

8. According to the counter affidavit filed on behalf of Purvanchal University, Jaunpur para 28, it was found that total 57 colleges (excluding the college in question) had submitted the examination forms along with the list of the students in the year 2007 and five colleges (including the college in question) had not submitted the list and examination forms. However, they were parties in the cases before the Supreme Court. In this regard a report was submitted on 22.5.2009 by the Co-ordinator of B.Ed entrance test section copy of which is Annexure 13 to the writ petition. Thereafter, it has been stated in para 30 of the counter affidavit that the examination Committee in its meeting dated 23.5.2009 resolved that a sub committee, to accept the examination forms of rest five colleges (including the college in question) who could not submit the forms earlier in the year 2007 should be constituted. The sub-committee submitted its report on 08.06.2008 copy of which is Annexure 15 to the writ petition. In the said resolution in respect of the college in question it is mentioned that receipt book and list of students/nominal role and admission forms submitted by the college in question tallied with each other. At the end it was mentioned that the B.Ed. Students admitted by the five colleges including the college in question should be permitted to appear in the examination provided that it was proved that admission forms were issued from the store in the session 2005-06 and it must be ascertained with the help of their serial numbers. In view of the said recommendation examination committee scrutinised the forms in order to verify as to whether they were issued from the store in the same session 2005-06 or not. Ultimate recommendation/resolution dated 16.6.2009 is Annexure 16. In the said recommendation/resolution 10 form numbers are given which according to the resolution were not issued from the store. These ten forms were filled by the ten petitioners of this writ petition. In para 35 of the writ petition it is mentioned that the college in question was not granted permission to run the B.Ed. Course w.e.f. 2006-07 onwards. This assertion has been admitted by the learned Counsel for the petitioner during arguments. Para 34 of the writ petition is quoted below :

that as decided by the examination committee, the issues of these students are still under investigation, and thus the present writ petition is premature at this stage, inasmuch as the final decision has not been taken by the University till date regarding their examination. This fact is absolutely clear from the resolution dated 16.06.2009

9. In para-32 of the rejoinder affidavit it has been stated that any college could

purchase as many forms as it desired even more than number of sanctioned seats. It has further been stated in the said para as follows:

In the present case, college of petitioners purchased ten forms, not from the University but from the other college.

10. Learned Counsel for the respondents during arguments admitted that any number of forms could be purchased and forms could also be interse sold and purchased by different colleges.

11. In para-29 of the rejoinder affidavit it has been stated that forms of the petitioners were also received by the University in the year 2007 alongwith the examination fees.

12. Annexure-R.A.1 is stated to be covering letter through which necessary records and fees etc with regard to 100 students of the College in question including the petitioners were sent and received by one Lal Chand Ram on 16.8.2007 who is stated to be employee of the University. Annexure-R.A.-1 is referred to in para-15 of the rejoinder affidavit. To the similar effect is Annexure-R.A.-2 letter dated 10.8.2007 referred to in para-17 of the rejoinder affidavit. R.A.-3 are alleged receipts issued by the College to the petitioners referred to in Para-18 of R.A. The receipts are of various dates from April to September 2006.

13. There is no controversy that petitioners are entitled to appear in the examination only if they were admitted in the relevant session. In view of conflicting stands taken in para 28 of the counter affidavit and para 29 of the rejoinder affidavit the only controversy which remains is as to whether in-fact the examination forms and fees of ten petitions was sent by the College to the University in the year 2007 or not.

14. The court cannot approve the stand taken by the University that merely on the basis of purchase of forms by affiliated colleges it must be assumed that admission was in-fact given to the students who had been shown to have filled the said forms.

15. Writ petition is disposed of with the direction to the respondent-authorities of the University including any other concerned authority of the University to decide the matter positively within two weeks from today as per stand of the University disclosed in para-34 of the writ petition (supra) to the effect that the matter is yet to be decided. While deciding the matter the assertions made in the writ petition and rejoinder affidavit and documents annexed therewith should be taken into consideration (copies of writ petition and rejoinder affidavit have already been served upon learned Counsel for the respondent - university who shall send the same to the University authorities alongwith copy of this judgment immediately).

16. The petitioners and the Management of the College may also file a supplementary representation before the authority concerned of the University through Registrar by 10.7.2009.

17. If the university decides in favour of the petitioners then the special examination shall commence within two weeks from the said decision.

18. Office is directed to supply a copy of this order free of cost to Shri Anil Tewari, learned Counsel for the University by 6.7.2009.