
(2006) 11 AHC CK 0228
In the Allahabad High Court

Raghunath Dwivedi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Allahabad University Student Union Act — Section 2(a) 7, 3F

Citation : (2006) 10 ADJ 571 : (2007) 2 UPLBEC 68

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Subject matter of impunment In the instant petition is the election held for electing the President of Allahabad University (Students Union) for the academic year 2005-2006. By way of the present petition, the petitioner has assailed the aforesaid election and also the impugned order of the election tribunal dated 30.4.2006 and prayed for the reliefs of a writ of mandamus directing the University authorities to declare the candidature of Opp. Party No. 9 as illegal and tainted with misrepresentation, and fraud attended with further prayer for a writ of mandamus commanding Vice Chancellor to decide the petitioner's representation dated 27.3.2006 and 3.5.2006 which was filed canvassing the validity of admission of the petitioner for the year 2002-2003 and 2003-2004 in M.A. Philosophy Allahabad University vis-a-vis migration certificate obtained by the respondent No. 9 subsequent to admission in Veer Bahadur Singh Poorvanchal University.

2. A brief resume of necessary facts culled out from the record is that in the election held for electing President of Allahabad University Student Union held for the academic year 2005-2006 the result of which was announced on 9.12.2005, Ajit Kumar Yadav, arrayed as respondent No. 9 was declared elected having secured the highest votes i.e. 1961 as against 1851 votes polled by the petitioner. The said election was assailed by the petitioner before the Election Tribunal Allahabad university (Student Union) through Returning officer. The

election petition filed by the petitioner culminated in being dismissed by the Election Tribunal consisting of its chairman-Justice R.B. Mehrotra and other members vide impugned order dated 30.4.2006. It is in this backdrop that the petitioner has filed the instant petition assailing the order dated 30.4.2006 passed by Election Tribunal.

3. I have heard learned Counsel for the petitioner as also learned Counsel for the Opp. Party No. 9 as well as Sri P.S. Baghel learned Counsel appearing for the University at a prolix length.

4. We have adopted constitutional democracy under the Constitution of India. The concept of election in the colleges/Universities is understood to be preparatory to acquaint the young mind with our Constitutional democracy during their student life for shouldering larger responsibilities of the country and to cultivate a broad and catholic spirit and discipline and for equipping them to work for the country and its people as a whole. There should be no doubt that many young minds cherish in their bosoms the ambition to serve the people by joining public life. It is no doubt a laudable ambition to cherish, a noble duty to perform. The public life is a very serious and difficult entailing prolonged and disciplined preparation and probation. The object behind holding of election in the Colleges/Universities seems to be to prepare them to forsake the pursuit of personal ends for the service of the country and to undergo the necessary training and probation. It is this concept that underlines the significance of election in the colleges and Universities.

5. Before proceeding further, the aims and objects of the Regulations on the Allahabad University Union may be noticed and is quoted below.

Whereas the Allahabad University Union has been constituted by Ordinances for the maintenance of discipline among the students of the University;

And whereas the said Ordinances have been amended in accordance with the decisions of the conference of the Vice Chancellors of the State Universities of Uttar Pradesh held at Lucknow on Jan 10,2000 under the chairmanship of the Hon"ble Chancellor;

And whereas the said amended Ordinances provide that the fundamentals of the Constitution of the Allahabad University Union shall be laid down by the Executive Council by Regulations;

6. The Mottoes of the Union are laid down in paragraph 3 (df) of the Regulations which are (i) Tamaso Ma Jyotingamaya, (ii) Sa Vidya Y Vimuktye and (iii) Quot Rami Tot Arbores.

7. In a recent decision the Apex Court also considered it appropriate to appoint a Committee namely Lingdoh Committee. The aforesaid Committee has submitted its report to the Apex Court and it would appear, while accepting the report of the Committee, the Apex Court directed the same to be implemented vide order dated 10.4.2006. The counsel appearing for University has filed this order passed

by the Apex Court to the supplementary affidavit sworn by Govind Prasad on behalf of the University on 26.10.2006 which is available on record.

8. Sri Shailendra learned Counsel appearing for the petitioner before commencing his arguments recounted certain relevant details to the effect that the petitioner was registered by Research Degree Committee for completing Ph. D course in 2004 from 30th Sept 2005 for subsequent one year and was thus an enrolled student under the Regulations of Allahabad University student Union. It was further recounted that the respondent No. 9 who had obtained his B.A. degree through correspondence course in the year 1997 further pursued his studies by seeking admission in M.A. in Ancient History in the academic sessions 1999-2000 and subsequently he again joined and appeared in the examination conducted by the Allahabad University for M.A. (Philosophy) previous and final years in the academic sessions 2002-03 and 2003-04. He also drew attention to the fact that Opp. Party No. 9 obtained migration certificate from Allahabad University on 4.3.2003. The learned Counsel drew attention to stipulation in the migration certificate urging that after obtaining migration certificate, the candidate could not appear in any examinations conducted by the University of Allahabad attended with further submissions that after obtaining migration certificate, the respondent No. 9 was not re-enrolled in the University and also after migration certificate from Allahabad University he joined Purvanchal University with Roll No. b85052 (Enrolment, No. PU 2002/160457 and by this reckoning, he further canvassed, the Opp. Party No. 9 cannot be reckoned as an enrolled student of this University and in consequence, a member of student union in view of definition of the word "student" contained in paragraph 2 (Q) 7 which denotes that a student means a person enrolled. Learned Counsel further canvassed that respondent No. 9 made application for enrolment only on 23.2.2006, which signifies that he was not a member of the student Union on the date of nomination and election of Allahabad University Union and therefore his nomination as well as permission to the petitioner to participate in the election was illegal and the result of election declaring Opp. Party No. 9 should be rescinded and order passed by the Election Tribunal dismissing election petition of the petitioner may be quashed. The learned Counsel also drew attention of the Court to the fact that after getting migration certificate, the petitioner got admission in Purvanchal University for B. Edxourse in the academic year 2003 and also joined B.T.C. (Bridge Course) of B.Ed degree with the avowed object of getting appointment on the post of Asstt. Teacher in primary section of schools run by the U.P. Basic Education attended with the submission that the Opp. party No. 9 was paid Rs. 2500/- as stipend which he received. In the light of the above details, the learned Counsel submitted that the Opp. Party No. 9 thus got admission in the Allahabad University without being enrolled and the Opp. party No. 9 was granted admission without enrolment which according to further submission of the learned Counsel for the petitioner was obtained by fraud and misrepresentation without disclosing the fact that after completion of B.A. course, he obtained migration certificate and joined Purvanchal University and

thus he cannot be treated as enrolled student of Allahabad University as required under law. The learned Counsel also submitted that Opp. party joined special B.T.C. course 2004 and was assigned to Ballia district where he completed training and was also paid stipend of Rs. 2500/- per month and he was finally declared successful and got appointment on 28.10.2005. He also submitted that the judgment of the Tribunal ignoring all these facts suffers from the error of law apparent on the face of the record and Opp. party No. 9 was incompetent to contest election as a student and the finding and declaration of result to the contrary by the University authorities ignoring the undisputed facts. The learned Counsel further urged that the University appointed a Committee to go into validity of admission of the Opp. party No. 9 and the said committee has already submitted a report leaning against the Opp. Party No. 9 but University authorities have refrained from passing any order on the said report unto this date.

9. Per contra. Sri Shashi Nandan and Sri V.K. Srivastava, learned Senior Advocates appearing for Opp. Party No. 9 assisted by Sri N.K. Pandey contended that the election of Allahabad University Student union pertaining to the year 2005-2006 was held on 24.11.2005 and counting was undertaken on 9.12.2005. He also contended that Opp. party No. 9 was rightly declared elected and the petitioner and other contesting candidates could not secure, higher votes than the votes polled by the respondent No. 9. They further contended that the respondent No. 9 was rightly admitted for doing M.A. in Philosophy in accordance with University Statutes and the Ordinance the Rules and he has already paid Enrolment Fee and the rest of the work of enrolment being ministerial act was to be done by the University. They further submitted that it would not impinge upon the right of the respondent No. 9 of pursuing his studies as postgraduate student even if enrolment is made subsequently. It was also submitted that petitioner has no locus standi to challenge the election of respondent No. 9 who is a returned candidate and the election petition was rightly dismissed. It was also submitted that the election petition is not maintainable in view of this Court decision in writ petition No. 7 of 2004 Hemant Kumar v. University of Allahabad attended with the contention that the respondent No. 9 is a regular student of Allahabad University in view of Section 2 (a) 7 read with Section 3 F of Allahabad University Student Union. The learned Counsel also had attention called to the fact that the petitioner never raised any objection to the candidature of the Opp. party No. 9 at the time of filing of nomination paper and since no objection was filed to the nomination, the respondent No. 9 contested the election in accordance with law and was rightly declared successful candidate In the election and at this belated stage the petitioner has no right to challenge the admission in University as well as the election of respondent No. 9. It was also contended that the Opp. party No. 9 deposited requisite fee on 27.8.2004 and he was issued identity card...and admission card accordingly immediately thereafter. The learned Counsel also submitted that migration certificate or enrolment is not required for admission but is required for degree only and hence the argument of the learned Counsel for the petitioner that the Opposite party No. 9 was not a

member of student union of the University is unsustainable.

10. From the counter affidavit sworn on 15.9.2006 filed on behalf of the University, it appears that the University of Allahabad after considering the entire materials available on record, constituted a Committee consisting of three members including Prpf. J.C. Srivastava, Chairman and Prof. V.M. Baljal and Prof. Sushll ? Srivastava, members. The enquiry report submitted by the aforesaid Committee has been annexed as Annexure 1 to the Supplementary affidavit filed on behalf of Opp. Parties 2 to 8 i.e. authorities of the University of Allahabad. The quintessence of the finding recorded by the aforesaid Committee is that the Opp. party No. 9 completed his graduation during academic sessions 1994 to 1997 and In the academic sessions 1997-99, the Opp. Party No. 9 appeared and passed M.A. in Ancient History. It would further appear that he again appeared and completed his M.A. (Philosophy) in the academic sessions 2000-2004 with enrolment No. C-9420186 which was allotted to him by the University when he was initially enrolled in the University as a B.A. student in the year 1994. The report further recites that the Opp. Party No. 9 applied for migration certificate which was issued to him on 4.4.2003 and thus he ceased to be student of the University with enrolment No. C 9420186 and therefore he could not have appeared in M.A. Philosophy final year In the academic sessions 2003-04 with the old enrolment i.e. No. C-9420186. The committee has opined that admission and examination of respondent no, 9 in M.A. Philosophy made in the year 2002-2003 may be cancelled as it contravenes Rules 14.1 and 14.3 of the Admission Rules of the University of Allahabad. The Committee further opined that action might also be taken under the provisions of statute 27 of the University of Allahabad Act, 2005. The Committee also recorded a finding that the admission taken by Opp. Party ho. 9 in M.A. (Hindi) course in the academic sessions 2004-2005 is Invalid on two counts (a) Rule 2.14.6 of the M.A./M.com. / M.Sc. Admission Test and Admission Bulletin and Rule 11 (f) of the Ordinances on admissions to the Master of Arts. (M.A.), Master of Commerce (M.Com.) and Master of Science (M.Sc) courses as Included In Chapter XXIV C of the Ordinances of the University of Allahabad spelled out that a person who has been on the rolls of the University (Including the Associated land Constituent Colleges and the Institutes thereof) for a period of eight academic Sessions or more (excluding the actual but no more than the permissible maximum period of enrolment as a research scholar) shall not be eligible for admission to any course of study. This rule actually included in the eight academic sessions three academic sessions as an undergraduate student plus three academic sessions when enrolled as a student of Allahabad University for completing the graduate course in law and two academic sessions as a post graduate student. It also includes three academic sessions as an undergraduate student alongwlth two academic sessions as a post graduate student in one subject and another two academic sessions as a post graduate student in another subject. Sri Yadav had completed the undergraduate course of the University and had also passed the post-graduate courses in two subjects from the University and therefore he was

ineligible for pursuing a third post-graduate course in Hindi from the University of Allahabad, (b) As is evident from the complete transcript related with the academic records of Sri Ajit Kumar Yadav that he could not have continued as a student of the University of Allahabad while pursuing the M.A. (Hindi) Course during the years 2004-2006 with the enrolment number c. 9420186 had ceased to be a regular student of the University of Allahabad on 4.4.2003 after the issue of the migration certificate by the University of Allahabad. As such, the committee is of the opinion that the admission of Sri Ajit Kumar Yadav to the M.A. (Hindi) in 2004-06 is invalid and therefore his admission during the academic years 2004-06 could be cancelled. The Committee is of the further opinion that Sri Yadav's actions while appearing and passing the M.A. (Philosophy) and M.A. (Hindi) examinations of the University were invalid /and therefore could be declared illegal and therefore immoral. The net result of the enquiry ordered by the University is that the Opposite party could not have been admitted in the facts and circumstances set out above.

11. Admission Rules as framed by the University exercising power u/s 28 of the Act of 1973 may also be noticed. Rules 2.12, 2.13, 2.14.1, 2.14.2, 2.14.3, 2.14.4 and 2.14.5 may be excerpted below.

2-12 fdlh ikB;dze esa bu fu;eksa rFkk fo"ofokky; ds v;/kns"kkSa@fofu;eksa@vU; izkfo/kkukSa ds mYya?ku esa izos"kkFkhZ dk izos"k ,oa ukekadu] fdlh Hkh pj.k esa ,sls mYya?ku ds izdk"k esa vkus ij iwoZxkeh izHkko ls fujLr gks tk;sxA

2-13 ;fn izos"kkFkhZ us vius izos"k vkosnu izi= esa dksbZ xyr lwpuk nh gSa] ;k mlesa fdlh laxr rF; dk mYys[k ugha fd;k gSa ;k mls fNik;k ;k mldh Hkzkd izLrqf dh gS] ;k mlus dksbZ xyr ;k QthZ i=tkr layXu fd;k gSa rks mldk izos"k gsrq fopkj.kh; jgus dk nkok fujLr gks tk;sxA rFkk og bl [k.M ds izLrj 2-12 ds izko/kku ls "kkflr gksxA

2-14-1- fo"ofokky; ?ftlesa mldk dksbZ laLFkku lEefyr gSa? ds fdlh Hkh fo|kFkhZ dks ;g vuqefr ugha gSa fd og ,d gh le; fo"ofokky; esa ,s ls vf/kd vikf/k&iznk;d ikB;dze ?ftlesa "kks/k lEefyr gSa? esa izfo"V@ukekafdr cuk jgs ;k fo"ofokky; esa mikf/k&iznk;d ikB;dze esa vius izos"k@ukekadu dh vof/k esa fdlh vU; laLFkk ?ftlesa fo"ofokky; dk lg;qDr ;k ?kVd egkfo|ky; lEefyr gSa? esa izfo"V@ukekafdr cuk jgsA

2-14-2- mi&izLrj 2-14-1 esa mYyf[kr fdlh fo|kFkhZ dk fo"ofokky; ?ftlesa bldk dksbZ laLFkku lEefyr gS? esa lEcU/kr ikB;dze esa izos"k@ukekadu ml frfFk ds izHkko ls Lor% fujLr gks tk;sxA ftl frfFk ij mldk fdlh vU; laLFkk ?ftlesa fo"ofokky; dk lg;qDr ;k ?kVd egkfo|ky; lEefyr gS? esa fdlh mikf/k&iznk;d ikB;dze esa izos"k@ukekadu gksrk gSaA

2-14-3 ;fn mi&izLrj 2-14-1 esa mYyf[kr dksbZ fo|kFkhZ fo"ofokky; ?ftlesa mldk dksbZ laLFkku lEefyr gS? ds fdlh mikf/k&iznk;d ikB;dze esa vius izos"k@ukekadu dh vof/k esa fo"ofokky; ?ftlesa mldk dksbZ laLFkku lEefyr gS? esa fdlh u;s mikf/k&iznk;d ikB;dze esa izos"k@ukekadu izkIr djrk gS] rks mlds u;s izos"k@ukekadu dh frfFk ds izHkko ls mldk iwoZorhZ izos"k@ukekadu Lor%

fujLr gks tk;sxA

2-14-4- ;fn ml fo|kFkhZ us] ftldk fdlh Lukrds?kj mikf/k&iznk;d ikB;dze ?ftlesa fof/k lEefyr gS? esa izos"k@ukekadu mi&izLrj 2-14-3 ds v/khu Lor% fujLr gks x;k gS] ,sls fujLrhdj.k ds le; mDr ikB;dze ds fdlh Hkx dh ijh{kk esa HkwriwoZ fo|kFkhZ ds :i esa izLrqr gksus dh vgZrk vftZr dj yh Fkh] rks og mi&izLrj 2-14-3 esa mfYyf[kr u;s ikB;dze dh vfUre ijh{kk m?kh.kZ djus ij ;k mlesa vius izos"k@ukekadu ds lekIr gksus ij mDr ? iwoZorhZ ikB;dze dh ijh{kk ds? Hkx dh ijh{kk esa HkwriwoZ fo|kFkhZ ds :i esa izLrqr gksus dh vuqefr ds fy, ijh{kk lfefr dks vkosnu dj ldrk gSa] ijUrj ijh{kk lfefr dsoy fuEufyf[kr "krksZa dh iwfrZ ij gh mls ,slh vuqefr iznku djsxhA

2-14-5- fo"fo|ky; ?ftlesa mldk dksbZ laLFkku lEefyr gS? dk dksbZ fo|kFkhZ ,d gh "kSf{kd l= esa ,d ls vf/kd mikf/k&iznk;d ikB;dze dh ijh{kk ds fdlh Hkx esa fu;fer fo|kFkhZ rFkk@vFkok HkwriwoZ fo|kFkhZ ds :i esa izLrqr ugha gks ldrk gSA

12. Having given my anxious thoughts to the submissions advanced across the bar and regard being had to the materials on record, the following facts would crystallize. It would appear that the Opposite party No. 9 completed his graduation from Allahabad University vide enrolment No. C-9420186 assigned in the year 1994 and after completion of graduation, he applied for migration certificate which was issued to him on 4.4.2003. One of the stipulations contained in the migration certificate is that after obtaining the migration certificate, a candidate cannot appear In any examination conducted by the University of Allahabad. Thereafter, it would further crystallize from the record, the Opposite party appeared in B.Ed examination 2003 from Ma Sharda Mahavldyaley Azamgarh with role No. 585052 affiliated to Purvanchal University Jaunpur. The B.Ed certificate, it would further appear was provisionally issued to the Opp. Party on 3.6.2004 and thereafter the Opposite party got admission in M.A. Hindi (Previous in Allahabad University for the academic sessions 2004-2005. It does not transpire from a scrutiny of the record that the Opp. Party No. 9 either applied for enrolment in the University of Allahabad attended with all requisite facts immediately at the time of seeking admission. In M.A. (Philosophy) course in the year 2002 or informing the University that he had ceased to be enrolled member of Allahabad University or that he submitted any paper in the University either before Admission committee or before the Registrar on the basis of migration certificate from Poorvanchal University at the time of admission in M.A. Hindi in the year 2004. There is further nothing on record to indicate that the Admission Committee constituted for admission in M.A. (Hindi) Course or other authorities of Allahabad University had knowledge about cessation of enrolment of Opp. Party No. 9 from Allahabad University at the time the Opp. Party applied for admission In the M.A.(Previous) Hindi examination. It would further transpire from the record that the Regional Director, N.T.T.E permitted the State of U.P. to Introduce a Bridge Course for a duration of 3 to 6 months for surplus unemployed B./Ed degree holder and the State of U.P. was

intimated about acceptance of its request and accordingly, a Government order was issued thereafter on 14.1.2004 for special B.T.C. course to such persons who had completed B.Ed or L.T. and are still unemployed. According to this Government Order dated 14th Jan 2004, all such persons will get further training of special B.T.C. for six months and they would get Rs. 2500/- stipend till their appointments are made as Asstt. Teacher in the Primary sections of Basic Schools. The record further reveals that Opp, Party No. 9 thereafter applied for special B.T.C. course advertised on 22.1.2004 and after counseling he joined the course on 2.8.2004 which according to further material on record, was completed on 30th April 2005. It would further appear that Opp. Party No. 9 further appeared in the Special B.T.C course examination on 17.7.2005. The result was declared on 28.10.2005. During this period, the Opp. party also received stipend from the State of U.P. through Sanyukta Kshetriya Gramin Bank Azamgarh which is now known as Gomti Gramin Bank and the respondent No. 2 was allotted Ballia for appointment as Asstt Teacher after completing special B.T.C. course at serial No. 114. It is further borne out from the record that in the election petition filed before the election tribunal all these facts were brought to the notice of the Tribunal and it was pleaded that in such case where the admission was obtained by concealment and on various other facts including that he got two degrees in the same year. It is borne out from the record that the Tribunal while considering the rival submissions of the parties came to following conclusions.

1. In such case the admission shall not be deemed to be non-est and resulting automatic cancellation of admission but there is a distinction between the languages used in the relevant Rules-one provides automatic cancellation with retrospective effect and the other requires cancellation of admission after providing opportunity of hearing by the authority.

2. So far as Ajit Kumar Singh Opp. Party No. 9 is concerned, he completed only Special B.T.C. course which is a special course and it cannot be treated as conferring degree and as such question of automatic cancellation of admission does not arise.

3. Sri Ajit Kumar Yadav got admission in M.A. Philosophy on misrepresentation or fraud if any. It contemplates that opportunity must be given to student before taking any such action.

4. The petitioner failed to demonstrate that Ajit Kumar Singh while pursuing his M.A. Hindi Course in University was also pursuing any other degree course either in the University-or in any other University outside the University of Allahabad and as such rule of automatic cancellation is not attracted and positive action is necessary after giving opportunity of hearing. It was further held that respondent No. 9 is a student of University and continued to do so in the relevant year 2005-2006 and was competent to contest the election.

13. In the ultimate analysis, the election of respondent No. 9 was upheld by the Tribunal.

14. Before coming to grips with the controversy involved In the present case, I feel called to acquaint myself with the Regulations of Allahabad University Union. The regulation defines the word "student" under Regulation 2 (a) 7 to the effect that a student means a person enrolled for the time being as a regular student to a degree granting course of study in the University and excludes a person who is, for the time being, a part time student, or an ex-student, or a student of an Associated or Constituent College or the Institute of Correspondence Courses and continuing education. In view of the definition aforesaid, this Court has to look, into the fact whether the Opp. Party No. 9 was an enrolled student of University and was on the regular rolls of the University on the date of submission of his nomination form for election.

15. It has come on the record that Opp. Party No. 9 made some application for enrolment Feb. 23, 2006 after getting migration certificate from Purvanchal University Jaunpur on 21.1.2006. This migration certificate of Purvanchal University makes it clear that after issuance of certificate, Opp. Party No. 9 ceased to be an enrolled student of Purvanchal University and cannot appear in any other examination, Similar conditions are also enumerated in the migration certificate Issued from Allahabad University to Opp. Party No. 9 on 4.4.2003. In the migration certificate issued by the Allahabad University there is a stipulation that after obtaining the migration certificate, the candidate cannot appear in any examination conducted by the University of Allahabad. From a perusal of the migration certificates aforesaid, it is clear that the petitioner was not an enrolled student of the Allahabad University from 4.4.2003. Further from a perusal of the mark sheet of Allahabad University of respondent No. 9 of B.A. Part III in the year 1997, his enrolment is mentioned as C-9420186. A student once enrolled in a University is entitled to continue in the University and for all subsequent appearance in the examinations conducted the University, the enrolment shall remain the same. The mark-sheet of respondent No. 9 as also the identity card issued by the University do provide column for enrolment number but the same do not contain any enrolment number in the case of Opp. Party No. 9 as would crystallize from the record and the counter affidavit. This does not appear to be the case of Opp. Party No. 9 that he made any application for re-enrolment or fresh enrolment before the election proceeding were commenced. The case of Opp. Party No. 9 is that he deposited fee which also includes the enrolment fee and the remainder work was to be done by the office of the University. To be precise, the learned Counsel stated that to assign enrolment number relates to ministerial work of the office of the University attended with further submission that since it was not given to the petitioner at the time of admission in M.A. Philosophy, it was axiomatic that this requirement could be satisfied at a later stage and therefore his continuance as a student of Allahabad University and a member of the student Union cannot be affected.

16. According to materials on record, it transpires that the petitioner had already taken admission in M.A. (Previous) in 2002 and he continued his studies in the University in 2002-2003 and thereafter from 4.3.2003 he ceased to be enrolled

student of the University but he appeared in examination 2004-2004 in M.A. Philosophy in which according to further materials on record, Opp. Party No. 9 got himself enrolled as student of Purvanchal University and pursued his studies in Purvanchal University and therefore migration from Allahabad University could attract automatic cancellation. In 2004, the Opposite party No. 9 had taken admission in M.A. (Hindi) First Year for the Sessions 2004 2006 as is clear from the various materials on record. In none of the documents filed by any of the parties, enrolment number of Opp. Party No. 9 was disclosed by any of the parties either at the time of seeking admission in M.A. Hindi. It appears that the opposite party No. 9 who appeared in the entrance test for admission in M.A. (Hindi) and was admitted as an enrolled student of the Allahabad University on the basis of enrollment No. C 9420186 as is clear from the report of the Enquiry Committee constituted by Allahabad University.

17. Learned Counsel for the petitioner urged that this clearly amounts to fraud and misrepresentation and the admission shall be deemed to be cancelled automatically in view of the undisputed fact. He further urged that from the materials on record, it is established that the respondent No. 9 joined and completed special B.T.C. course, which is a part of B.Ed degree for appointment in the basic Schools. According to further submission of the learned Counsel, once the Opposite party joined the Special B.T.C. course in the year 2004, he received stipend of Rs. 2500/- per month from the stage of training till appointment is made. It is further submitted that it is on the record that he completed his training on 17.7.2005 and in the circumstances; the further submission is that the admission of the Opposite party No. 9 and his continuance as regular student of Allahabad University is apparently on the basis of concealment and misrepresentation of facts which amounts to fraud. According to further submission, under the rules the admission shall be deemed to be non-est and shall be taken to be such from the date of his admission and by this reckoning no opportunity of hearing is required to be given to the Opp. Parties in the above perspective.

18. For this purpose, Rules of admission are necessary to be referred to. Chapter 17 of the Allahabad University Ordinance dwells on admission and registration of students of University. From a perusal of the said ordinance, it would crystallize that for admission to post graduate course, prescribed form obtainable from the office of the Registrar shall be submitted to the end of the Registrar of the University and the same shall be referred to admission Committee. The admission Committee after admission shall forward the list to the Registrar. The Ordinance 3 of Chapter 17 makes it clear that on receipt of order of admission, the student shall present himself in the office of the Registrar of the University to receive his admission card of enrolment as a student of University and pay the admission fee etc. The word admission and registration has been used by the Ordinance. The admission and registration are two different acts. It appears that Opposite party who applied for admission and was admitted did not present himself at the office of the Registrar for enrolment as a student of University with

complete detail of his previous history. It would further appear that his enrolment made at the time of admission in B.A. ceased to be operative from 4.3.2003 on which date he got migration certificate with further rider that he would not appear in any examination. It was incumbent upon the on which date he got migration certificate with further rider that he would not appear in any examination. It was incumbent upon the Opp. Party No. 9 to present himself before Registrar with all such facts that his enrolment had already come to an end and he wants re-enrolment or no fresh enrolment in the facts of the case as no enrolment was made with the result none of the papers of Opp. Party No. 9 bear the new enrolment number. It would further appear that even after migration certificate had been issued, the petitioner appeared In M.A. Philosophy final year examination In the academic sessions 2003-2004 as a regular student of the University inspite of rider given in the migration certificate itself that he shall not appear in any of the examination with old enrolment number. Paragraph 7 of the Ordinance makes it clear that Registrar shall contain name of each enrolled student with date of admission and roll No attended with further details. Paragraph 8 of the Ordinance prescribes that on a student being enrolled, the Registrar shall inform such students accordingly. In the present case admittedly, Opp. Party was not enrolled after 4.3.2003. It would further appear that the Opp. party No. 9 was not an enrolled student when he submitted nomination papers for election. As stated supra, he applied for being enrolled in Feb 2006 being disclosing the fact that he had passed M.A. Philosophy final year examination in the academic sessions 2003-2004 and subsequently he appeared in M.A. (Hindi) (Previous) examination in the academic sessions 2004-2005. It also appears that there is nothing in the nomination form filed by the Opp. Party No. 9 to indicate that the Registrar of the University was apprised that in 2003, the Opp. Party No. 9 got B.Ed Degree from Purvanchal University or that he had undergone special B.T.C. course in the year 2004 after obtaining migration certificate from the Allahabad University in the year 2003. It would further appear that on one hand, he obtained migration certificate from Allahabad University for taking admission in B.Ed course which he did from Purvanchal University and at the same time, he continued his studies at Allahabad University in M.A. (Philosophy) between the year 2000-2004 and he again took admission in M.A. Hindi in the academic year 2004-05 which he completed in the year 2006. Thus it would transpire that he was wholly incompetent to file nomination form. The definition clause also makes it clear that he was required to be an enrolled student on the date of nomination. The Allahabad University Statute further makes it clear that every candidate for an examination shall submit a descriptive role of himself in his own hand writing in the form prescribed for the purposes of executive council and as such descriptive role shall be attested, in case of a candidate for Master degree, by the Head of Department concerned. In the present case, admittedly, the petitioner did not mention any enrolment number as he was not enrolled from 4.3.2003 upto Feb 2006 and therefore, he could not even appear In the examination, 2004 in which he appeared for M.A. (Philosophy) and in the year 2005 in which he sought admission for M.A. (Hindi) course.

19. A perusal of affidavit filed by Govind Prasad, Office Asstt working in the office of Registrar of Allahabad University, on behalf of Allahabad University, particularly the contents at page No. 10 makes it clear that the respondent No. 9 was a regular student of Allahabad University for academic sessions 2002-04 and during this very period, he prosecuted his studies and appeared in and passed M.A. Philosophy examination coupled with further fact that it was during this very period that he had obtained B.Ed degree from Purvanchal University and In the meantime, migration certificate dated 4.4.2003 Issued by Allahabad University was submitted in original form in Purvanchal University as is clear from the letter of Registrar Purvanchal University dated 1.8.2006. The petitioner appeared in M.A. (Final) Philosophy and passed this examination for the academic Sessions 2003-04 as is clear from C.A. 4 to counter affidavit of University i.e. letter of Examination Controller. It is further clear from the record that the petitioner has taken admission in M.A. Hindu and deposited fee on 17.8.2004 and appeared in M.A. first Year Hindi Examination with Roll No. 2369 without indicating any enrolment number and the final year M.A. Final Hindi Examination 2006. The record further makes it clear that the petitioner's enrolment No. was C-9420186 in graduation which he did in the year 1997 and from this very enrolment, he appeared in B.A. first year 1995 B.A. Part II in 1996 and B.A. Part III in 1997.

20. It is further established from the record that from August 2004 to May 2005, the Opposite party No. 9 had undergone training of Special B.T.C. which is for the unemployed B.Ed degree holder and appeared in the examination on 17.7.2005 and result thereof was declared on 28.10.2005. Without disclosing this information, the petitioner has taken admission and got deposited fee on 17.8.2004 in M.A. (Hindi) and he filed nomination on 1.11.2005 in the election held for electing President of the Student Union of Allahabad University. From a perusal of the application filed by respondent No. 9 it clearly transpires that in the application made by him for seeking enrolment submitted in Feb 2006 he did not divulge this fact. He has only mentioned the details of having passed High School in 1990, Intermediate in 1994 and B.A. final in 1997. He did not disclose the fact that In the year 2002-2003 and 2003-2004, he was awarded degree from this University in M.A. Philosophy and further that in the same year i.e. 2003 he completed his B.Ed course from Purvanchal University. The application filed by Opp. Party for admission also does not disclose that he apprised the University that he was undergoing training for Special B.T.C, which is a part of B.Ed, for which examination was held on July 17, 2005. Thus, from a close scrutiny of materials on record, there is no manner of doubt that Opp. Party No. 9 was pursuing studies in different course and obtained admission in M.A. by concealment and misrepresentation of facts in this University which amounts to fraud and without disclosing that migration certificate was also issued on 4.3.2003 and he cannot take admission in any course or appear in any examination from Allahabad University regard being had to the fact that he was also not enrolled in the University.

21. The Statue and ordinance of the University makes it clear that for the

examination, minimum attendance to the extent of 75% is essential. There is nothing on record to indicate that the petitioner had completed 75% of the attendance or how his attendance was found to be complete when for the period between August 2004 and July 17, 2005 he was undergoing special B.T.C. training. The noticeable aspect is that without disclosing the above facts that he had already ceased to have any concern with this University after he had obtained migration certificate on 4.4.2003 according to which he could not be permitted to appear in any examination of the University, how he was admitted and allowed to appear in the examinations conducted in the year 2003 and 2004 in which year he completed his M.A. Final in Philosophy and further that when he was not enrolled which was mandatory to become a member of the University, how he got admission and appeared in the examinations.

22. In the above perspective this Court is further of the view that in the galaxy of the facts of the present case, regulation 2 (13) will apply on all fours and the admission sought by the respondent No. 9 shall be deemed to be non-est and shall be deemed to have been cancelled on the date it was made. This Court, in the above perspective, does not agree with the finding of the Tribunal that any further opportunity is required to be afforded to the Opp. Party No. 9 in the matter. In the counter affidavit, the only objection raised by Opp. Party No. 9 is that no appointment letter was issued and he was not in service. The fact that he completed six months course for Special B.T.C. and thereafter appeared in the examination and result was also declared in Oct 2005 simultaneous with his studies in M.A. Hindi in the Allahabad University which also appears to be the basis of the claim of Opp. Party No. 9 for propping up his nomination and his contest in the election held for electing President of the Allahabad University. Even assuming that he was not issued any appointment letter, the fact remains that the State has paid him Rs. 2500/- as stipend for the entire period he was declared successful in the special B.T.C. meant for unemployed B.Ed student and was assigned to Ballia district for appointment as teacher in Basic Schools for teaching work. Further, even if it be taken into reckoning that the Opp. Party did not join in the assigned district, in my considered view, this will not ease out the situation arising out of the present dispute particularly considering the aims and objects of student Union Regulations and relevant provisions of law referred to above.

23. The other objection raised by the Opposite party No. 9 is relating to election petition which according to him is not maintainable on the ground that question of nomination cannot be agitated in the election petition by reason of the fact that it was not raised at the time of filing of nomination paper. The provisions relating to election petition are embodied in paragraph 13 F and the same being germane to the controversy is abstracted below.

13(f) No petition challenging the election of a member of the Executive Committee or the General Assembly shall be filed except-

(i) by a candidate who was a contestant for the same office or representative

position;

(ii) within three days of the declaration of the result of such election;

(iii) before the Returning officer; and

(iv) in the format drawn up by the Board of Trustees for the purpose.

From a close examination of the election petition, it would appear that the grounds urged are cogent or convincing and as such, the election petition In my view, is not confined to any specific ground and all matters relating to election including nomination are apt to be raised. In such a situation, the general principles of election petition will be applicable and by this reckoning, if a nomination was wrongly accepted and the person concerned is not entitled to contest the election, the ground can be raised in the election petition. In this connection, this Court does not countenance the argument of the learned Counsel for the Opp. party that this question cannot be raised In the election petition. In this view of the matter, this Court is of the view that election of the Opp. party No. 9 is wholly invalid and Opp. party No. 9 was wholly incompetent to participate in the election and his election as president of the Allahabad University (Students Union) is unsustainable and the order of the election Tribunal which was passed without considering the aspect is liable to be quashed.

24. The learned Counsel for the petitioner relying upon law laid down by the Apex Court in AIR 1969 SC 2101 argued that in case election of Opp. Party No. 9 is declared invalid, the petitioner may be declared as elected. I have examined the ratio flowing from the said decision. It has been held in the said decision that if there are only two contestants and election of one is declared invalid, the second one can be declared elected. The aforesaid case was considered by the Apex Court in a subsequent case reported in P.K. Khandre v. Dr. Vijay Kumar Khandre 2000 5 SCC 568 in which It was held by the Apex Court that in case of multi cornered contest, even if elected candidate is subsequently found to be disqualified, the candidate who secured more votes than the remaining candidate can not be declared as elected. The reasoning adopted in the said decision by the Apex Court is that it cannot be presumed that the votes secured by the disqualified candidates would have been wasted or would have been secured by the next candidate who has secured more votes. It was further reasoned in the said decision that if disqualified candidate was not permitted to contest the election then how the voters would have voted In favour of the candidate who has secured more votes than the other remaining candidates would be a question the realm of speculation and unpredictability. In such a situation, the Apex Court held that declaring the section of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected. In the present case, regard being had to the fact situation of the present case, in which contest was multi-cornered, the aforesaid decision cited across the bar fully applicable and can be taken aid of for being applied to the fact situation of the present case.

25. In the view of foregoing discussions, the writ petition succeeds and is allowed in part and in consequence, the order passed by Election Tribunal dated 30.4.2006 is quashed and election of Opp. party No. 9 is declared invalid. In the facts and circumstances of the case, no other relief can be granted. In view of the fact that election of the respondent No. 9 has been declared invalid, it is directed that fresh election shall take place accordingly.

26. In the facts and circumstances, there would be no order as to costs.