
(2009) 01 AHC CK 0160
In the Allahabad High Court

Registrar, Chhatrapati Shahuji Maharaj University	APPELLANT
Vs	
Vinay Gupta and Another	RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Citation : (2009) 2 AWC 1316

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—Heard Sri Neeraj Tiwari, learned Counsel for the appellant, Sri S.K. Srivastava, learned Counsel for respondent No. 1 and learned standing counsel for respondent No. 2.

2. Learned Counsel for the parties agree that this special appeal be decided at this stage, without calling for any further affidavits.

3. This is a special appeal against the judgment and order of the Hon''ble single Judge dated 11th November, 2008, whereby the writ petition filed by respondent No. 1, Vinay Gupta has been allowed.

4. Brief facts necessary for appreciating the issues raised in the special appeal are as follows:

5. The appellant University published a notice for admission to LL.B. three years degree course. The respondent No. 1 applied in pursuance thereof and was permitted to appear in the entrance test, in which out of nearly 4,000 students he secured 35th position. However, he was not granted admission by the University on the ground that he did not have 45% marks at the graduation level. The denial of admission was challenged by the respondent No. 1 in the aforesaid writ petition, the writ petition has been allowed by the Hon''ble single Judge.

6. The Hon''ble single Judge under the impugned judgment has held that the

circular of Bar Council of India dated 19th September, 1997 has been misinterpreted by the University. The petitioner-respondent No. 1 cannot be denied admission after declaration of the results of Entrance Test, as he had not concealed or misrepresented any fact at the time of filing of the admission form or at any other stage. It has further been observed that in case the petitioner did not have required minimum percentage at gradation level, it was for the University to reject the admission form of the petitioner at the threshold.

7. Sri Neeraj Tiwari, learned Counsel for the appellant-University challenging the judgment and order of the Hon"ble single Judge contended that there is no dispute to the minimum requirements provided by the Bar Council of India vide circular dated 19th September, 1997. He submits that under said circular if there is an entrance test, the minimum percentage of marks to have been achieved by the candidate appearing in the Entrance Test at the gradation level should be 40%. If there is no entrance test, the pass percentage at the graduation level should be 45% for LL.B. admission. Learned Counsel for the appellant submits that there is no dispute that entrance test has been held for admission to LL.B. Three years degree course by the University. The University had decided that even for candidates undergoing the entrance test, those who have obtained at least 45% marks at the graduation level would alone be eligible for being considered for admission.

8. Learned Counsel for the appellant submits that such prescription of higher marks does not violate any of the provision of the circular of the Bar Council of India and is legally permissible. In support thereof, he has placed reliance upon the judgment of the Hon"ble Supreme Court in the case of State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others,

9. Learned Counsel for respondent No. 1 opposing the contention raised on behalf of the University submits that requirement of at least 45% marks at the graduation level by the University for being eligible for being considered for admission to LL.B. three years degree course is contrary to the circular issued by the Bar Council of India. He submits that the circular issued by the Bar Council of India is binding upon all the Universities so far as law courses are concerned. He clarifies that the petitioner-respondent No. 1 had not concealed or misrepresented any fact at the time of filling of the admission form. The University ought to have rejected the form itself, if the petitioner was not eligible and should not have permitted the respondent No. 1 to appear in the entrance test. Having permitted the respondent No. 1 to undertake the entrance test, the University cannot deny admission on the plea that respondent No. 1 does not fulfil the prescribed qualification.

10. We have considered the submissions made by the learned Counsel for the parties and have gone through the records.

11. There is no dispute that the Bar Council of India vide circular dated 19th September, 1997 has provided as follows :

If there is entrance test, the percentage should be 40 but if there is no entrance test the percentage should be 45 for LL.B. Admission.

12. The marks obtained by the respondent No. 1 at graduation level are admittedly less than 45%.

13. The issue which is up for consideration is as to whether when an entrance test is conducted for admission to LL.B. Three Years Degree Course, the required percentage at the graduation level as per the Bar Council of India's Circular should be 40% or whether additional condition of having 45% marks in graduate level examination can be introduced by the University and whether such additional prescription by the University would contravene the provisions of the circular of the Bar Council of India.

14. The statement of the learned Counsel for the appellant that such prescription of an additional qualification by the University is legally justified is well founded and squarely answered by the Hon''ble Supreme Court as detailed below.

15. The question as to whether the State authorities who are conducting admission to Post Graduate Medical Courses can prescribe any qualification in addition to those laid down by the Medical Council of India came up for consideration before the Constitutional Bench of the Hon''ble Supreme Court of India in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, The Hon''ble Supreme Court in the said case held that although the Medical Council has power to lay the minimum qualification with regard to admission to various courses but prescription in addition thereto by the State Government will not be illegal. The State Government was held entitled to lay down any additional or requisite qualification in the said case.

16. Following was laid down by the Hon''ble Supreme Court in the case of Dr. Preeti Srivastava (supra) specially in paragraphs 45 and 46:

45. In Ambesh Kumar (Dr.) v. Principal, L.L.R.M. Medical College, a State order prescribed 55% as minimum marks for admission to postgraduate medical courses. The Court considered the question whether the State can impose qualifications in addition to those laid down by the Medical Council of India and the regulations framed by the Central Government. The Court said that any additional or further qualifications which the State may lay down would not be contrary to Entry 66 of List I since additional qualifications are not in conflict with the Central regulations but are designed to further the objective of the Central regulations which are to promote proper standards. The Court said : (SCC p. 552, Para 26)

The State Government by laying down the eligibility qualification namely the obtaining of certain minimum marks in the M.B.B.S. Examination by the candidates has not in any way encroached upon the regulations made under the Indian Medical Council Act nor does it infringe the Central power provided in Entry 66 in List I of the Seventh Schedule to the Constitution. The order merely

provides an additional eligibility qualification.

None of these judgments lays down that any reduction in the eligibility criteria would not impinge on the standards covered by Entry 66 of List I. All these judgments dealt with additional qualifications...qualifications in addition to what was prescribed by the Central regulations or statutes.

46...of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority....

17. It would be worthwhile to reproduce paragraph 9 of the judgment of the Hon'ble Supreme Court relied upon by the learned Counsel for the appellant in the case of State of Tamil Nadu and Anr. (supra), which reads as follows:

9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain-prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by A.I.C.T.E. It is no doubt true that A.I.C.T.E. prescribed two modes of admission...one is merely dependent on the qualifying examination and the other, dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum In the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by A.I.C.T.E., can it be said that it is in any manner adverse to the standards fixed by A.I.C.T.E. or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by A.I.C.T.E. would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government If we proceed to take the standard fixed by A.I.C.T.E. to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test In either event, the streams proposed by A.I.C.T.E. are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by A.I.C.T.E. is inexorable and that that minimum alone should be taken into consideration and no other

standard could be fixed even the higher as stated by this Court in Dr. Preeti Srivastava case. It is no doubt true, as noticed by this Court in Adhiyaman case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of A.I.C.T.E. in the present case are such which are not attainable to which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including Dr. Preeti Srivastava case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

18. The aforesaid judgment relied upon by the learned Counsel for the appellant specifically answers the issue which has been raised in the present special appeal. In the case of State of Tamil Nadu (supra), the Hon''ble Supreme Court examined the standard prescribed by A.I.C.T.E. with regard to the examination and eligibility criteria for appearing in the common entrance test. In paragraph 9 of the judgment as quoted above, it has been laid down by the Hon''ble Supreme Court that for the common entrance test, the standard fixed by the State Government of having obtained certain marks higher than the minimum by the A.I.C.T.E. are legally justified.

19. In view of the ratio laid down by the Hon''ble Supreme Court in above two cases, it is clear that the prescriptions by the University of having at least 45% marks in the qualifying examination i.e., graduation course is an additional qualification which is fully supported by the ratio of the judgment of the Hon''ble Supreme Court in the case of Dr. Preeti Srivastava (supra) and State of Tamil Nadu (supra).

20. Learned Counsel for the respondent No. 1 submits that once the University has issued an admit card to a candidate, it cannot reject the candidature of such candidate at a later stage. In support thereof he has placed reliance upon the judgment of the Hon''ble Supreme Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra,

21. The judgment relied upon by the learned Counsel for respondent No. 1 is with reference to a different set of circumstances. In that case candidate was granted admission and thereafter he was also permitted to undertake the first course and then to take the examination of Part I LL.B. Course in April, 1972, subsequently the University cancelled his candidature. The Hon''ble Supreme Court in these facts held that if the University acquiesced to the infirmities which existed at the time of admission and allowed the appellant to undertake the course and then to appear in Part I examination in April, 1972, then with reference to the University Statute, the University had no power to withdraw the

candidature of the appellant. In the present case, the University has not granted admission to the respondent No. 1 in LL.B. three years degree course and he has been denied such admission on the ground that respondent No. 1 does not fulfil the minimum eligibilities as detailed in brochure published by the University at the threshold of admission.

22. Learned Counsel for the appellant has also referred to the brochure which has been annexed as Annexure-C.A. 1 to the writ petition specifically paragraph 10 read with paragraph 19 under the heading of "Aharta Sambandhi Niyam". It contains a specific condition that for permitting a candidate to appear in the entrance examination, the minimum eligibility is of having passed qualifying examination with 45%. The University has not admitted the respondent No. 1 in the LL.B. three years degree course, because of lack of the said eligibility. The principle of promissory estoppel cannot be pressed by the learned Counsel for the respondent No. 1 for evading the requirements so prescribed. It is not the case of respondent No. 1 that he has been granted admission in LL.B. three years degree course and he is not being permitted to appear in Part I examination after he has completed his first year course.

23. We may also refer to the other judgment, reliance whereof has been made by the respondent No. 1, i.e., the judgment of the Hon"ble Supreme Court in the case of Dolly Chhanda v. Chairman, JEE and Ors. 2004 (10) SBR 424.

24. The Hon"ble Supreme Court in the said case itself has laid down that the general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose and that there can be no relaxation. The judgment relied upon by the learned Counsel for respondent No. 1 whereby the Hon"ble Supreme Court held that every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. The said case is clearly distinguishable in the facts of the present case and does not help the respondent No. 1.

25. Respondent No. 1 being not possessed of the minimum eligible qualification prescribed, the denial of admission to him by the University is justified. No principle of promissory estoppel can be pressed by the respondent No. 1 in support of his admission.

26. Therefore, the judgment and order of the Hon"ble single Judge dated 11th November, 2008 cannot be legally sustained and is hereby set aside.

27. The present special appeal is allowed. The writ petition filed by respondent No. 1 is dismissed. No order is passed as to costs.