

(2001) 04 AHC CK 0104
In the Allahabad High Court
Case No : Writ Petition No. 2600 (M/S) of 2000

Rahul Kumar

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

All India Council for Technical Education (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for the Courses or Programmes) Regulations, 1994 — Regulation 4
Uttar Pradesh State Universities Act, 1973 — Section 28(5)

Citation : (2001) 2 UPLBEC 1627

Hon'ble Judges : Pradeep Kant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kant, J.—By means of this writ petition, the petitioner seeks his admission in one of the 7 Government Engineering Colleges in Uttar Pradesh under Non-Resident Indians Sponsored quota. The petitioner appeared in U.P. State Engineering Admission Test (Special Examination) 2000 UPSEAT 2000 held in September, 2000 for being admitted to the graduate course in Engineering Colleges in State of U.P. The petitioner secured his position in the waiting list as a candidate belonging to Backward category. He was also called for counselling by the Coordinator of the Examination on 18.10.2000 and again on 19.10.2000. It has been alleged that at the counselling the petitioner was informed by the members of the Committee that he may be provided a seat reserved under Non-Resident Indians sponsored quota. The petitioner in pursuance of the aforesaid representation by the members of the Committee, moved an application seeking his admission against one of the seats meant for NRI sponsored candidate, which application was allowed and 25.10.2000 was fixed for counselling for admission against NRI sponsored quota. The petitioner complied with all formalities for being admitted under NRI sponsored quota and as per directions of the authorities he also deposited Rs. 3400/- as counselling fee for the purpose. An

Admission Card was also issued to him for the aforesaid counselling. However, the counselling did not take place and the petitioner was informed by the Co-ordinator that he cannot be admitted under NRI sponsored quota. Being aggrieved with the aforesaid non-consideration of his claim for admission under NRI sponsored quota, the petitioner has knocked the doors of his Court for issuing necessary direction for giving admission to the petitioner under the aforesaid quota.

2. A pre-admission competitive examination known as U.P. State Engineering Admission Text 2000 UPSEAT 2000 was conducted by the Co-ordinator, Moti Lal Nehru Regional Engineering College, Allahabad. The Engineering Colleges of Uttar Pradesh are affiliated to U.P. State Technical University, Lucknow and Moti Lal Nehru Regional Engineering College, Allahabad held the examination for and on behalf of the Technical University at Lucknow. The Course of prospectus, syllabus etc. are managed by the University and the degree is also awarded by the said University. The terms and conditions and detailed instructions were published in a Brochure. The Brochure indicated the list of colleges, availability of seats, mode and procedure of admission and other details. The petitioner, who has passed his High School and Intermediate Examinations securing 75% and 68% marks respectively, appeared in the said examination. There were about 3000 seats in 24 Engineering Colleges, out of which 7 Engineering Colleges were Government Engineering Colleges and 17 were Private Engineering Colleges of State of Uttar Pradesh. The petitioner relying upon the contents of the information brochure and the representation made by the Co-ordinator at the time of counselling on 18th and 19th October, 2000 applied for seeking admission under NRI sponsored quota in one of the seven Government Engineering Colleges but was denied admission despite all formalities being completed by him including the payment of fee for the same.

3. Learned Counsel for the petitioner strenuously urged that in the information Brochure 5% seats have been reserved for the NRI/NRI sponsored quota candidates for which 60% marks in Physics, Chemistry and Maths were prescribed as minimum qualifying marks as against which the petitioner had secured 68% marks, and, therefore, the petitioner has a legal claim for being admitted against one seat under the aforesaid quota. His further submission is that 35 seats were still available which were to be filled by NRI/NRI sponsored quota candidate and the petitioner, who was willing to pursue his career in Computer Science and Engineering subject for his Bachelor Degree in Engineering, was entitled for being admitted in one of the seven Government Engineering Colleges under the said quota. Further allegation is that the petitioner during the course of counselling was offered a seat in Information Technology subject in JSS Academy of Technical Education, Noida but the petitioner has sought his admission under NRI sponsored quota. The submission of the learned Counsel for the petitioner is that once there exist a NRI sponsored quota which was published in the information brochure and the petitioner having been made to comply with the formalities required under the brochure for seeking admission against this quota

and he having been required to deposit the fee which fee was deposited also, the action of the opposite parties in not granting admission under the NRI quota is wholly without any authority besides being arbitrary and greatly prejudicial to the interest of the petitioner whose academic career has suffered a set back because of the deliberate inaction on the part of the opposite parties.

4. Learned Counsel for the Co-ordinator, in response to the above claim of the petitioner, submitted that for this Special Examination, namely, U.P. State Engineering Admission Test (Special Examination), 2000, no quota for NRI sponsored candidate has been prescribed and as such the petitioner cannot be admitted under the aforesaid quota. He submitted that in exercise of powers conferred by Section 28(5) of the U.P. State Universities Act, the State of U.P. constituted an Admission Committee responsible for admission of students in all the State and Private Engineering Colleges of U.P. and also on U.P. seats in different Regional Engineering Colleges situated throughout the country. For the purpose of conduct of admissions in different Engineering Colleges and U.P. seats a combined entrance examination is conducted every year. This year the combined entrance examination was conducted by the Institute of Engineering and Technology, Sitapur Road, Lucknow and the students opting for admission to various Engineering courses in different Engineering Colleges were granted admission by it. The students seeking admission under the quota of Non-Resident Indians (NRI) and Non-Resident Indians sponsored candidates were admitted by the UPSEAT-2000 conducted by the LET, Lucknow. After completion of counselling by the IET, Lucknow, certain additional seats were created. Since these seats came into existence after the counselling was completed by the IET, Lucknow, these seats could not be included in the examination conducted in UPSEAT-2000. For the purpose of admitting the students against these additional seats the State of U.P. issued the Government Order dated 5.9.2000 nominating Moti Lal Nehru Regional Engineering College (MNR), Allahabad for conducting the Special Examination for filling up these seats. The Special Examination conducted by MNR, Allahabad was for the purpose of admission on the newly created seats and also on the seats which could not be offered in the UPSEAT- 2000 meaning thereby that the seats which remained vacant in the examination conducted by the IET, Lucknow against UPSEAT-2000 Examination were also to be filled in from amongst the candidates who had appeared in the Special Examination held for additional seats. This position was clarified by letter of the Special Secretary dated 5.9.2000, which has also been brought on record. As a result of the Special Examination the students were to be admitted in the academic session 2000-2001 itself. Since the time was short, a wide publicity was done and information brochure alongwith the application forms were made available for sale with effect from 12.9.2000. Prior to the publication of the information brochure there was no decision of the State Government or the Admission Committee as to whether the NRI or NRI sponsored candidates could be granted admissions on the seats for which the Special Examination was being conducted by the UPSEAT- 2000 (SE). In these circumstances, it was mentioned in the

information brochure that free and payment seats for NRI/NRI sponsored quota could be available. Learned Counsel further clarified that admission under the NRI/NRI sponsored category in the main examination are made under the Government Order issued by the State of UP. on 5% seats which are over and above the admitting capacity of the institution. These 5% seats are created as per policy decision of the Government for encouraging the NRI and NRI sponsored students to study in different Engineering Colleges of the State. This Government Order dated 18.7.1998 is on record. In the absence of creation of 5% additional seats for NRI/ NRI sponsored candidates, the Admission Committee could not on its own grant admission to such candidates irrespective of their positions obtained in the main merit list. He reiterated that as the main examination for conduct of admission was already over, special examination was directed to be conducted only in respect of increased and un-offered seats of UPSEAT-2000. No Government Order was issued by the State of U.P. creating 5% additional seats on the newly created seats and as such it could not be offered to NRI candidates. The matter was actively considered by the Admission Committee which in its emergent meeting held on 23.10.2000 after taking the entire facts and circumstances into consideration resolved that in such situation admissions to NRI/NRI sponsored students could not be offered in the special examination, as it was limited to the seats for which it was held. The resolution of the Admission Committee passed in its emergent meeting held on 23.10.2000 has been filed alongwith the counter affidavit. As a sequel to the aforesaid documents, learned Counsel for the Coordinator vehemently urged that there was no seat available under the NRI quota and as such it was wrong to say that 35 seats of NRI quota are still lying vacant. He has also denied that any representation was made by the authorities for withdrawing the candidature of the petitioner from the counselling and to apply for a seat under NRI sponsored quota. The submission is that the matter was still under consideration and there was no question of giving any such assurance to the candidate. The counselling was closed on 25.10.2000 and 750 free seats (87 General, 278 OBC and 385 SC) remained vacant. In addition to this 1243 payment seats are also vacant. These vacancies are, however, in Private Colleges of the State. Liberty has been given to the Private Colleges for filling up these seats.

5. The State has filed counter-affidavit which is sworn by one Jitendra Ram Tripathi, Under Secretary, Technical Education, Government of U.P., Civil Secretariat, Lucknow in which in mention has been made about the judgment of the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , wherein the Apex Court deprecated the practice of charging high fee in the matter of admissions in Engineering Colleges and other professional colleges. Emphasis has been laid upon the fact that the Supreme Court has laid down a detailed scheme in para 206 onwards of the judgment to be adopted in the matter of admission of students in professional colleges and under the said scheme the seats in the professional colleges including Engineering Colleges were classified as free seats and payment seats. The

Supreme Court clarified that no professional college shall be entitled to ask for further payment or amount under whatever name it may be called from any student allotted to it whether against free seat or payment seat. In a review petition, the Supreme Court further clarified that professional colleges were permitted to admit NRI/Foreign students to the extent of 5% of their total intake capacity for a given year. The submission is that from the various judgments given by the Supreme Court, the professional colleges were permitted to admit NRI/Foreign students so as to provide financial assistance to the professional colleges as they had a better paying capacity for depositing higher fee than the students admitted against the payment seats. According to the learned Counsel for the respondent such admission of students was limited only to NRI/Foreign students only. It has been re-stated by the State that the Special Examination was conducted as per Government's decision and due to scarcity of resources available for development of institutions, it was necessary to permit admission of students who are either foreign national or true Non-Resident Indians so that institutions may enhance their earnings to meet out their developmental expenditure. As a result of admission of NRI sponsored candidates in various Engineering Colleges students having connections in foreign countries and possessing higher purchasing power got admission on more favoured disciplines irrespective of their merit positions. In these circumstances, it has been emphasised that henceforth the Government is actively considering not to allow admission to NRI sponsored candidates. The minutes of the meeting dated 21.8.2000 held under the Chairmanship of the Minister for Technical Education have been annexed for indicating their decision for not providing any quota of NRI or Managerial quota in UPSEAT-2000. However, the Government Order dated 5.9.2000 which is also on record provide under Point No. 4 that quota for free/paid NRI shall remain as before.

6. The counter-affidavit explains the stand of the Government and states that in view of the Government Order dated 5.9.2000 the NRI quota continued to exist in UPSEAT-2000 (SE) as before and presently there is no distinction between NRI quota or NRI sponsored quota. It may be relevant to mention here that on 9.1.2001 learned Standing Counsel Sri S.N. Shukla, on the basis of the instructions received, stated that there is no distinction between NRI quota and NRI sponsored quota and NRI quota also continues to exist. The Court, therefore, required a clarification from the State Government in this regard by means of filing an affidavit. This affidavit has been filed in which besides the stand taken by the State Government, the aforesaid statement has been clarified in the aforesaid manner i.e. presently there is no distinction between NRI quota and NRI sponsored quota.

7. The counter-affidavit further states that if the petitioner is permitted admission at this juncture he may not be able to complete the attendance required for taking the University examination. Later on another affidavit has been filed by Sri Jitendra Ram Tripathi in which it has been stated that under the Government Order dated 18.7.1998 admissions of NRI and NRI sponsored

students were being made in Government Engineering Colleges on 5% seats over and above the seats sanctioned by the All India Council of Technical Education (AICTE). The AICTE has framed regulations known as All India Council of Technical Education (Grant of approval for starting new technical institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994 which are applicable to Government Engineering Colleges as well. Regulation 4(d) of the Regulations provides that the approved intake capacity of seats cannot be increased or varied except with the approval of the Council. Since the admissions of NRIs were being made over and above the seats sanctioned by the AICTE, it was decided not to make any admission of NRI candidates.

In a bid to clarify their earlier stand taken in the first counter-affidavit in which it was specifically stated that there is no distinction in NRI and NRI sponsored quota at present, in this affidavit it has been stated that the Government Order dated 5.9.2000 by which the MNR, Allahabad was nominated to conduct the Special Examination related to both State and Private Engineering Colleges and, as such in Clause IV thereof it has been provided that quota for free, payment and NRI would remain the same. The distinction which is being sought to be drawn is that this clause relates only to the Private Engineering Colleges and in order to avoid confusion it has also been decided to issue separate Government Orders in respect of Government and Private Engineering Colleges in future.

8. The submission, therefore, is that Clause IV of the Government Order dated 5.9.2000 related only to Private Engineering Colleges and not to the Government Engineering Colleges. Further it has been asserted that in the meeting presided over by the Minister for Technical Education on 21.8.2000 it was decided that no student of NRI/NRI sponsored category could be admitted in the Government Engineering Colleges in the UPSEAT-2000 (SE). It may be worthwhile to mention here that since in the first counter-affidavit filed by the State although it was stated that there was no distinction between NRI and NRI sponsored quota, the counter-affidavit did not indicate as to whether in view of the above, the State Engineering Colleges are entitled to take admission under NRI sponsored quota or not. This Court, therefore, directed the Secretary, Technical Education, Government of U.P. to appear in person. The Secretary, Technical Education, Government of U.P. appeared in person and another counter-affidavit, a reference of which has already been made in the preceding paragraphs, was filed on 12.2.2001. In this affidavit shelter has been taken of the decision taken by the Committee headed by the Minister for Technical Education, U.P. in which meeting, held on 21.8.2000 it was decided that no student of NRI/NRI sponsored category could be admitted in UPSEAT-2000 (SE).

9. From the stand taken by the opposite parties it appears that they themselves were not clear as to whether admission under NRI quota or NRI sponsored quota could be given in the Special Examination or not. The State has gone to the extent of saying that it has been decided that henceforth the Government is

actively considering not to allow NRI sponsored candidate. This affidavit is dated January 30, 2001 which reflects that till 25th October, 2000 no final decision was taken by the State Government for not allowing the NRI sponsored candidate on any seat in the Government Engineering Colleges. In the subsequent counter-affidavit dated 12.2.2001, it has again been stated that Clause IV of the Government Order dated 5.9.2000 relates only to the Private Engineering Colleges and in order to avoid confusion "henceforth" it has also been decided that separate Government Orders would be issued "in future". Further reliance has been placed on the minutes of the meeting dated 21.8.2000 for disallowing admission to any NRI/NRI sponsored candidate in UPSEAT-2000 (SE). It is not appreciable as to when, on the one hand, the State Government has taken a different stand that there is no distinction between NRI and NRI sponsored quota at present and has stated that decision to prohibit such admissions, namely, NRI sponsored candidate was still under active consideration of the Government which means that the decision of the minutes of the meeting dated 21.8.2000 were not acted upon and were not taken as sufficient to mean that such quota of NRI/NRI sponsored candidates has been deleted from the category of admissions in UPSEAT-2000 (SE), as in case this decision which was taken on 21.8.2000 was to be implemented, then there was no occasion for the Government to file an affidavit dated 30.1.2001 specifically stating that the matter of not allowing admissions to NRI sponsored candidates was under active consideration. The confusion still prevails. Learned Counsel for the petitioner produced a copy of the admission notice (advertisement) issued for the UPSEAT- 2001 published on 12.2.2001 in daily. The Times of India in which again the following clause has been inserted :

"For admission to Foreign Nationals, NRI's and NRI sponsored Indian Nationals who possesses minimum requisite qualification against NRI quota available in State funded institutions. Refer Information Brochure, UPSEAT-2001."

The Information Brochure, UPSEAT-2001 has also been placed before the Court, Item No. 10 deals with admissions to NRI quota and is being quoted below :

"10. Admissions to NRI quota available in Govt./ State Funded Colleges of Uttar Pradesh.-Foreign Nationals/NRI candidates who possesses minimum requisite qualification may get direct admission on Five Percent seats of total intake in Government/State Funded Colleges/ Institutions of Uttar Pradesh. Five seats in MNREC, Allahabad are available for Foreign Nationals/NRI candidates. For Government and Government funded institutions, the NRI quota will be filled in the following manner:

1. NRI quota seats shall be FIRST filled from genuine NRI's/Foreign Nationals, who,

- (a) have passed the qualifying examination with Physics, Chemistry and Mathematics from an institution situated outside India, which is considered equivalent to (10+2) examination by the Association of India Universities;

OR

have passed High School Certificate Education (GCE) Exam, with Physics, Chemistry and Higher Maths (A) from London/ Cambridge/Sri Lanka;

(b) have appeared in SAT II examination with Maths level II C. Physics and Chemistry;

(c) their relative merit will be decided based on their Sat-II score;

(d) Genuine NRI's/Foreign Nationals should only submit the application form, but need not appear in UPSEAT-2001 admission test.

2. The counselling and seat allotment for filling NRI quota through genuine NRI/ Foreign National based on SAT-II score will be held on 25th June, 2001. The candidates are required to be present in UPSEAT office in person on 25th June, 2001 at 9.00 A.M. alongwith the required documents and fee (refer para 14.4 of information brochure). Such candidates should only submit UPSEAT application form but need not appear in the Admission Test.

2. Admission of NRI sponsored candidates against the vacant seats in NRI quota, if any, available in Govt./State Funded Engg. Colleges/Institutions shall be governed by the latest Govt. Orders issued by Govt. of U.P. and Govt. of Uttaranchal. The latest Govt. Order issued by Govt. of U.P. and Govt. of Uttaranchal shall be applicable for admissions in NRI quota.

Thus again despite the meeting dated 21.8.2000 on which great reliance has been placed and the decision of the AICTE, admission of NRI sponsored candidates has again been, provided against vacant seats for NRI's available in Government/State Funded Engineering Colleges/Institutions and they are to be governed by the latest Government Orders issued by Government of U.P. and the Government of Uttaranchal. The opposite parties have not brought on record any Government Order apart from the Government Order dated 18.7.1998 and 5.9.2000. From the own stand taken by the opposite parties, namely, Coordinator of UPSEAT 2000 (SE) and the State, it transpires that the question as to whether NRI/NRI sponsored candidates should be granted admission in Government Engineering Colleges or not has not yet been conclusively decided and, therefore, again in UPSEAT-2001 the aforesaid quota has been prescribed although this time the NRI sponsored candidates would be entitled to admission against only those seats which fall under the NRI quota and remains unfilled.

10. From the information Brochure of UPSEAT-2000 (SE) one has to see the general instructions as provided in Clause 3 in the said Brochure. The relevant paragraphs of said Clause 3 are as follows :

"3. Samanya Soochna :

Uttar Pradesh Rajya Engineering Pravesh Pariksha, 2000 (Visehsh Pariksha) as Pravesh Samiti, Moti Lal Nehru Regional Engineering College, Allahabad dwara sampann ki jayegi fiske dwara B.E./B. Tech"/B. Tech (Technology)/B.Arch/B. Tech

(Krishi Abhi) B. Pharma upadhi ke live 4/5 varshiya pathyakramon men praveshe ke abhiyantran sansthanon evam niji kshetra ke engineering mahavidyalayon ke atirikt desh ke samast kshetriya abhiyantran sansthanon men (U.P. seaton hetu) varsh 2000-2001 ke liye pratham varsh men praveshe diya jayega. Moti Lal Nehru Regional Engineering College, Allahabad men praveshe kewal unhin seaton par diya jayega jo U.P. men sthit kisi sansthan se arahkari pariksha uttirn karne wale abhathiyon hetu arakshit hai.

H.B.T.I.. Kanpur men technology pathyakram men praveshe prakriya akhil bhartiya star par hogi lathapi kisi bhi pradesh/kendra shasit kshetra ke 15 pralishat se adhik sthanon par pravesarthi nahin liye jayenge. Yeh pratibandh Uttar Pradesh ke liye nahin hoga.

Abhiyantran Mahavidyalaya, Pantnagar men samanya va anusuchit jati ke upbandh sthano men adhikam 15% sthano par, poorvottar rajyon se (jahan Engineering College nahin hai) tatha Delhi, Himanchal Pradesh, Jammu and Kashmir, Kerpla, Madhya Pradesh, Maharashtra, Orissa, Pa. Bengal tatha Kendra shasit pradeshon se (kisi bhi rajya/Ke.Sa. Pradesh se 3% se adhik nahin) abhyarthiyon ko sammilit variyalakram men praveshe diya jayega. Parantu krishi abhiyantran pathyakram men inke praveshe ke liye vichar nahin kiya jayega.

Niji Abhiyantran Mahavidyalayon men 50 pratishat nishulk sthan honge, 45 pratishat sashulk sthan honge tatha yahan yeh ullekhniya hai ki niji abhiyantran mahavidyalayon ke 45% sashulk sthanon men praveshe prakriya akhil bhartiya star par hogi tatha 5 pratishat sthan videshon men rahne wale/apravasi bhartiya/apravasi bhartiyaon dwara prayojit abhyarthiyon ke live arakshit honge. Nishulk evam sashulk sthano par chayan praveshe samiti dwara kiya jayega. In teeno samvargon ka shikshan shulk evam anya shulk rajya sarkar dwara ghoshit shasnadesh ke anuroop hi hoga.

Apravasi Bhartiya quota-

Videshi nagrik/. apravasi bhartiya/apravasi bhartiya dwara prayojit aise bhartiya abhyarthiyon jo nuntam aharta rakhte hain, shaskiya/shasan dwara vitta poshit tatha niji kshetra ke engineering collegeon/ sansthanon men kul uplabdh seaton ki adhikam panch pratishat seaton par seedhe praveshe le sakte hain. Moti Lal Nehru Engineering College, Allahabad men uplabdh 5 seaton kewal videshi nagrik/ apravasi bhartiyaon ke liye hain. Shaskiya/shasan dwara vitta poshit sansthanon men apravasi bhartiya quota apravasi abhyarthi/videshi nagraik abhyarthi/apravasi bhartiya dwara prayojit abhyarthi se prathamikta kram men nimnanusar bhara jayega- 1. Apravasi bhartiya quota sarvapratham aise apravasi bhartiya/videshi nagrik dwara bhara jayega jisne :

(Aa) Bhautiki, Rasayan tatha Ganit vishayon sahit arhakari pariksha Bharat se bahar sthit kisi sansthan se paus kiya hai jo Association of Indian Universities dwara (10+2) pariksha ke samkaksh manya hai.

Athwa

Jisne High School Certificate Education Pariksha (GCI) Bhautiki, Rasayan तथा Uchcha Ganit(A) vishyon sahith London/Cambridge/Sri Lanka se pass ki hai.

(Ba) SAT II Pariksha men Ganit Level IIC, Bhautiki तथा Rasayan vishyon sahith baitha hai.

(Sa) Aise chhatron ki sapeksh variyata soochi unke SAT II score ke aadhar par banayi jayegi.

(Da) Apravasi bhartiya/videshi nagrikon ko UPSEAT-2000 (Vishesh Pariksha) Pravesh Pariksha men baithne ki koi avashyakta nahin hai.

2. Uprokta Para I ke anusar apravasi bhartiya/videshi nagrikon ko pravesh dene ke baad bachi hui seaton ko, yadi koi hodn, apravasi bhartiyaon dwara prayojit abhyarthiyon se prathamika ke kram men bhara jayega. Jinhone UPSEAT-2000 (Vishesh Pariksha) men nuntam arhkari ankpraptkiye hon athwa jinhon ne arhkari pariksha Bhautiki, Rasayan तथा Ganit vishyon ke yog men nuntam 60% ank prapt kiye hon."

11. The aforesaid Brochure thus specifically pronounces that so far Private Engineering Colleges are concerned, they were entitled to admit NRI/NRI sponsored candidates against 5% seats whereas in the Government Engineering Colleges 5% seats over and above the available seats can be filled in from Foreign Nationals and NRIs. Further in case any seat which falls within the quota of Foreign Nationals/NRIs remains unfilled, the same can be filled in from amongst from amongst the NRI sponsored candidates in order of preference. However, the Government Order dated 5.9.2000 mentions that the quota of Free/Paid/NRI's in this Special Examination shall remain as it was in existence since before. In this Government Order the category of NRI sponsored candidate is not to be found. On the question as to whether the omission of category of NRI sponsored candidate was a deliberate and conscious decision taken by the opposite parties, the State was required to explain, on which the learned Standing Counsel on 9.1.2001 stated that there is no distinction between NRI quota and NRI sponsored quota and NRI quota also continue to exist. Later on an affidavit was filed by the State Government on 30.1.2001 in which it was again stated that in view of the Government Order dated 5.9.2000 the NRI quota continued to exist in UPSEAT 2000 (SE) and there is no distinction between NRI or NRI sponsored quota. In a subsequent affidavit filed on 12.2.2001 the decision of the meeting headed by the Minister for Technical Education, U.P. on 21.8.2000 was mentioned in which a decision is said to have been taken that no student either NRI or NRI sponsored category should be admitted in Government Engineering Colleges in UPSEAT 2000 (SE). The stand thus taken by the State Government is not only confusing but also contradictory in terms which further stands confused when in the counter affidavit dated 30.1.2001 the Government has specifically stated that henceforth the Government is actively considering not to allow admission to NRI sponsored candidate in Government Engineering Colleges meaning thereby that upto 30th January, 2001 the decision had not

been taken for not allowing admission to NRI sponsored candidate in Government Engineering Colleges. No Government Order issued after 5.9.2000 has been placed on record or has been produced before the Court which indicates that no such decision has been taken till date. To the contrary, the Information Brochure for UPSEAT-2000 statement given by the learned Standing Counsel on behalf of the State on 9.1.2001 and the counter affidavit dated 30.1.2001 filed by the State all indicate that there exists NRI quota and the opposite parties do not make any distinction between NRI quota and NRI sponsored quota. The minutes of the meeting dated 21.8.2000 was thus not made known to the students nor the same was published and the advertisements have been issued inviting applications, not in terms of the aforesaid decision which is being relied upon for refuting the claim of the petitioner but independent of the same, in which unfilled seats under Foreign Nationals/NRI quota have been allowed to be filled in by the State Engineering Colleges from amongst the NRI sponsored candidates in order of preference if they possess the minimum requisite qualification.

12. Taking a decision in a meeting without making it known to the public or persons, namely, the students who are likely to be directly affected by such decision and issuing advertisement and inviting applications ignoring the said decision which has not been made public at any point of time would not permit the opposite parties to take recourse to the proceedings of such meeting for denying the claim of the student (petitioner) in case he has applied for a seat in terms of the advertisement issued and Information Brochure supplied to him. The decision might have been taken by the AICTE that the seats cannot be increased by the Government Colleges, namely, 5% over and above the sanctioned seats or the decision taken in the alleged meeting headed by the Minister concerned are the matters in which deliberations have been made internally without giving any knowledge and information to the affected parties. Merely noting down the decision on files and not pronouncing them and not making them known to the public or concerned persons would have no effect. More so, when the opposite parties who had full knowledge of these decisions had chosen not to implement them and rather to proceed with the process of selection/admission in the same manner as it was being done before, they cannot be allowed to refuse admission on the strength of such notings or resolutions. Even the State Government has categorically admitted that it does not mean any distinction between NRI or NRI sponsored candidate for the purpose of admission under the NRI quota. If there is no distinction, for the aforesaid purpose between the two categories of candidates, referred to above, there is no occasion for the opposite parties to deny admission to the petitioner or like candidates in case the NRI quota remains unfilled and they are entitled to get admission in order of preference subject to minimum requisite qualification being possessed by them, as prescribed. The fact that the Government has not yet taken a decision to ban or prohibit admission of Foreign Nationals/NRI/NRI sponsored students is also evident by the advertisement/Information Brochure

issued for UPSEAT-2001 in which again such a quota has been prescribed. This advertisement/Information Brochure has been issued again without giving effect to the alleged meeting dated 21.8.2000 wherein it is said that a decision has been taken that no admission of NRI/NRI sponsored quota shall be given.

13. In the instant case, it could not be disputed that the petitioner's name was placed in the waiting list and he was called for counselling on 18th and 19th October, 2000, on which date it transpired that he can apply and have a seat under NRI sponsored quota for which necessary application with all formalities was not only filed by him but was entertained and he was also allowed to deposit the requisite fee for the purpose which is reflected by the receipt issued therefor. It is fully within the domain of the AICTE or the State Government to classify and categorize the seats for the purpose of admission and may or may not allow the quota of Foreign Nationals/NRI/NRI sponsored candidates but in the absence of any such decision being taken, after inviting applications under the said quota and applications having been invited in view of their own advertisement/information brochure, it would not be open to the opposite parties to deny admission to the petitioner under NRI sponsored quota, if the seats are available in terms of the conditions mentioned in the Information Brochure. From the stand taken by the opposite parties, particularly the State Government, on whose Order dated 5.9.2000 and minutes of the meeting dated 21.8.2000, the Coordinator has refused to admit the petitioner, it is crystal clear that the Government is not treating the NRI sponsored quota distinct or separate quota from NRI quota. According to the unambiguous statement made in the two counter affidavits filled by the State and in view of the Government Order dated 5.9.2000 the NRI quota continues to exist as before and presently there is no distinction between NRI quota or NRI sponsored quota. Thus, if, the aforesaid quota subsists and is available in UPSEAT-2000 (SE), there was no ground for refusal of admission of the petitioner under the aforesaid quota subject to his eligibility, as provided in the Information Brochure.

14. It has been urged by the learned Counsel for the opposite parties that one Semester has been over and, therefore, the petitioner cannot be given Admission, It is not the fault of the petitioner for the loss of one Semester but because of the indecisive attitude of the opposite parties and contradictory stand being taken by them, the petitioner had to suffer loss of studies and has to miss one Semester of his academic career. For such delay the petitioner cannot be further penalised and, therefore, the delay in granting admission to the petitioner cannot be a ground for denying him the relief claimed. The admission to the petitioner has not been refused on the ground that no such seat is available for the NRI sponsored candidates but on the ground that there is no quota in UPSEAT-2000 (SE) for NRI sponsored candidates. This plea has been found to be incorrect.

15. In view of the above, the petitioner is entitled to be considered for admission and is entitled to be admitted under NRI sponsored quota against any unfilled

seat under the quota of NRI, as provided in the Information Brochure subject-to his eligibility of having minimum requisite qualification in order of preference.

16. In view of the above, it is provided that the opposite parties shall consider the admission of the petitioner under NRI sponsored quota in the light of the observations made above, which shall be done forthwith. It is hereby clarified that if the petitioner gets admission as an NRI sponsored candidate in pursuance of UPSEAT-2000 (SE), it will not necessarily give him a right to appear in any Semester if he is not otherwise entitled to appear for shortage of attendance and which cannot be condoned under the Rules but in any case the petitioner shall be treated to be a candidate admitted against UPSEAT-2000 (SE) for the purpose of pursuing his studies in a Government Engineering College, where he is granted admission. Let a writ in the nature of mandamus be issued accordingly commanding the opposite parties for considering the admission of the petitioner forthwith.

17. The write petition is allowed . No order as to costs.