

(2010) 05 AHC CK 0133

In the Allahabad High Court

Case No : Special Appeal No. 710 of 2009 Connected with Special Appeal Nos. 717 and 708 of 2009 and Special Appeal Nos. 179,245,738,290,291, 292, 293, 301, 302, 309,312,320 and 326 of 2010"

Rajesh Kumar Yadav and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Citation : (2010) 05 AHC CK 0133

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Allowed

Judgement

Pradeep Kant, J.

Though in Special Appeal Nos. 717 of 2009, 708 of 2009 and 179 of 2010, there is some delay, but since there is no objection, we condone the delay.

These special appeals have been filed challenging the order passed by the learned Single Judge dated 4.9.09 by means of which, the prayer of the appellants to allow them to appear in the B.Ed. examination for the Academic Session 200708 has been rejected.

The learned Single Judge interpreting the Government Order dated 12.8.08 and relying upon the judgement of the Full Bench in the case of Tuples Educational Society and another vs. State of U.P. and another, 2008 (26) LCD 687, made an observation that the Division Bench judgement passed by this Court on 5.1.09 in Writ Petition No. 3 (MB) of 2009, in re: Committee of Management, Shiv Nath Verma Smarak Post Graduate College, Dev Nagar (Khanpur Pilai), District Sultanpur vs. State of U.P. and others, and other connected matters, being against the judgement of the Full Bench cannot be followed.

In regard to the Government Order dated 12.8.08, which permitted the private unaided affiliated institutions, who were running B.Ed. Course to make direct admission on the vacant seats, which could not be filled in through counselling,

from amongst the same students whose name find place in the select list prepared under the Common Entrance Test, but could not get admission anywhere, the learned Single Judge found that prior approval having not been taken by the colleges from the State Government to make admissions, such admissions shall not stand protected under the aforesaid government order.

For understanding the aforesaid controversy, the facts which are relevant are as follows:

For running B.Ed. Course, the recognition from the National Council of Teachers Education (NCTE) under the NCTE Act is the prerequisite condition and it is only when the recognition is granted by the NCTE for running B.Ed. Course w.e.f. from a particular academic session and for the required strength of students (seats), such an institution is to apply for affiliation to the concerned University, which University makes an inspection and after being satisfied that the college has all the necessary paraphernalia and facilities and fulfills all the conditions as are required, makes recommendation to the State Government for granting approval for affiliation.

This requirement of seeking approval by the State Government is in pursuance of the provisions of Section 37(2) of the U.P. State Universities Act, 1973, as amended.

The State Government on its turn, on being satisfied that the college in question fulfills all the conditions as are required for running the B.Ed. Course and it is fit for grant of affiliation by the University, grants necessary approval for the academic session/sessions and consequently, the affiliation is granted by the University.

This approval by the State Government is sometimes granted for permanent affiliation and sometimes for temporary affiliation.

Prior to the amendment of Section 37(2), which substituted the "Chancellor" with the "State Government", there was no provision for granting temporary affiliation and, therefore, a Division Bench of this Court in the case of Committee of Management vs. Chancellor and others (Writ Petition No. 5881 (MB) of 2002), decided on 18.11.2002, provided that, in a case, where the college asks for affiliation, only permanent affiliation can be granted, if the affiliation is to be granted, otherwise it can be rejected, but no temporary affiliation can be granted.

After the aforesaid judgement, Section 37(2) was amended and subsequently power to grant temporary affiliation has also been inducted.

In pursuance of the judgement in the case of P.A. Inamdar and others versus State of Maharashtra and others, (2005) 6 SCC 537, a Common Entrance Test is held for admission to the B.Ed. course for different unaided institutions, which are duly affiliated with their Universities. In this Common Entrance Test, all the students, who are willing to seek admission in B.Ed. course do appear. On the basis of the result of this Common Entrance Test, a list of selected candidates in

order of merit is prepared. After the declaration of the aforesaid result, counselling takes place, which is again conducted by the University and in this counselling, the students are offered colleges in order of their merit in the select list and in order of preference i.e. of their choice.

Following the meritcumpreference criteria, the colleges are allocated and the admission to the students are given. At times, the students, who opt for a particular college/institution during the counselling, when are sent to the college concerned, they change their mind and do not take their admission in that college. It also happens that before admission is taken by a student in a particular college, which he has opted, he gets some other professional course or decides not to pursue the B.Ed. course.

There may also be cases where the students do not opt a particular college or the college does get the students much less than the number of sanctioned seats. In all these situations, seats remain vacant in colleges, despite repeated counselling being done.

This also happened for the academic session 200708, wherein after repeated counselling, 15,430 seats remained vacant, a figure given by the State Government itself.

The institutions, who were short of students and where the seats were lying vacant, appear to have approached the State Government asking the Government to provide students and to allow them to take admissions. The State Government, in turn, considering the fact that such a large number of seats are still lying vacant and if they are allowed to go as such, it would not be in the interest of the students nor in the interest of the institutions, issued a Government Order/Office Memorandum dated 12.8.08, saying that counselling for the B.Ed. course for the Academic Session 200708, was held by Chhatrapati Shahuji Maharaj University, Kanpur, in three phases but even thereafter, including the seats under the NRI quota, 15,430 seats are still lying vacant i.e. the seats which could not be filled in. The selffinanced institutions since have made a request for filling up those seats and, therefore, the State Government has decided to constitute a Committee consisting of two persons, namely, the Registrar of the concerned University as Chairman and Regional Higher Education Officer as member. The Committee of the aforesaid two persons was to collect the data regarding vacancies of individual colleges affiliated to the concerned University, both as against 85% general seats and 15% NRI seats. The Committee was obliged to forward that information with details about the vacant seats to the University concerned, within one week and the concerned University on the basis of the information so collected, was to forward its own recommendations to the State Government.

Clause 3 of the aforesaid Office Memo provided that on the recommendation made by the concerned University regarding vacant seats, approval of the State Government be asked for and the colleges would make admissions by a method

which is transparent, viz. by making advertisement in two leading newspapers, which have wide circulation, both in Hindi and English and that the admissions would be made from amongst the students on the basis of the merit list, prepared under the Common Entrance Test.

The Hindi version of the Office Memo dated 12.8.08 reads, as under:

There is nothing on record to indicate that the Committee so constituted did collect any information about the vacancies from the colleges, nor there is anything to indicate that the University forwarded any such report to the State Government, seeking its approval, as against the vacancies.

It is the specific case of the appellants that they were admitted as per the Government Order dated 12.8.08, after advertisement being published and they were also the students whose names did find place in the merit list, prepared under the Common Entrance Test, but could not get admission in any college, during the counselling.

The record does not show that there is any denial of the aforesaid facts, as also stated by the counsel for the appellants.

It may be relevant to mention here that prior to the filing of present writ petitions by the students, the management of their colleges had also filed writ petitions seeking the relief that the students admitted by them in pursuance of the Government Order dated 12.8.08, be allowed to appear in the examinations.

Writ Petition No. 3 (MB) of 2009, which was decided on 5.1.09 is the petition which was disposed of by a Division Bench of this Court, permitting these students to appear in the examinations and the only objection which was taken at that time, by the respondents, was that unless the students so admitted, complete the studies for the given period, namely, 180 or 210 days, as the case may be, they cannot be allowed to appear in the examinations.

The counsel for the University who appeared in the said case, viz. Sri Shashi Prakash Singh and Dr. Ravi Kumar Misra, who is appearing in the present cases also, made it clear that if the admissions have been provided in pursuance of the directives of this Court, there is no likelihood that for such students who have been admitted on 12.8.08 or thereafter or who will be admitted after the counselling, as directed by the High Court in Writ Petition No. 59133 of 2008, the examinations would be held without allowing the students to complete 180/210 days, as may be required.

Since a directive was issued by the Court at Allahabad in Writ Petition No. 59133 of 2008, for holding one more counselling in June, 2009, therefore, the question arose, whether the seats which have been filled in by giving admission to the students as per the Government Order dated 12.8.08, would be treated as unfilled vacancies or not and the Court clarified as under:

"We may clarify that the orders passed at Allahabad in the aforesaid writ petition

obviously mean that the counselling has to be done for the seats which are still vacant and have not been filled in but if the students have already been admitted by the colleges from amongst the students who had appeared in the common entrance test but could not bring themselves within the cut of marks in the merit, as per the Government Order dated 12.8.08, such seats cannot be taken to be unfilled for the purpose of the counselling, which has been directed by the High Court."

In identical matters, with respect to various colleges, affiliated to various other Universities, similar orders, as passed in Writ Petition No. 3 (MB) of 2009 were passed, and we are informed that all the Universities, e.g. Agra, Bareilly, Kanpur, Meerut and Gorakhpur did allow the students to appear in the examination but the present University, Dr. Ram Manohar Lohia Avadh University, Faizabad has declined to grant permission to the students to appear in the examination, though the University was bound by the order passed in the writ petition earlier filed by the Management substantially for the same relief as was claimed in the present writ petitions.

The plea of the University is that in view of the aforesaid order dated 5.1.09 passed in Writ Petition No. 3 (MB) of 2009, the benefit of that order can be given only in case the students were found to have been admitted in pursuance of the Government Order dated 12.8.08 but since the admissions were not made in accordance with the said Government Order, therefore, the benefit of the same cannot be given to the appellants.

We may put on record that though no such plea was taken by the University in Writ Petition No. 3 (MB) of 2009, and the only objection was that unless the students so admitted complete their studies for the required number of days, they cannot be allowed to appear in the examination, but after the aforesaid order, they had taken the fresh objection, as aforesaid.

The main objection which has been raised to the eligibility of these students to appear in the examination is that the admissions were made by the institutions without obtaining prior approval/sanction from the State Government in terms of Clause 3 of the Government Order dated 12.8.08.

Dr. Ravi Kumar Misra, at this stage, submitted that he has instructions to say that the University has forwarded the report regarding the number of vacant seats within a week from the date of issuance of the aforesaid government order, to the State Government. He, however, could not clarify that such a report was submitted after the information being gathered by the Committee constituted under the aforesaid government order and rather his statement shows that it was sent of his own by the Registrar of the University.

Be that as it may, the fact remains that, obligation to collect information regarding the vacant seats lay upon the Committee constituted under the aforesaid government order, which was to be forwarded to the Universities and in turn, the Universities were to send it to the State Government, where, after the

approval of the vacancies, the admissions were to be made by the institutions. Even if the University in question has forwarded the position of vacant seats of its own under the signatures of the Registrar, no exception can be taken for the reason that the purpose of the aforesaid government order was to apprise the State Government about the actual vacancies, which were allowed to be filled in by the aforesaid process by the institutions under direct admissions.

The plea of the respondents that the report of vacancies was furnished to the State Government by the Universities, and it was the obligation of the college to seek approval for admissions, does not flow from the text of the government order.

The requirement under the Government Order dated 12.8.08 was that there should be vacancy/vacancies under the sanctioned strength of seats for which affiliation has been granted and that such a seat could not be filled despite counselling already having been done, and if such vacancies exist, then, of course, the college was entitled to make admissions under the procedure provided under the Government Order but if there was any vacancy which does not fulfill the criteria aforesaid, then the college would not be entitled to take admission beyond such vacancies, which stood verified and approved.

The requirement of ascertaining such vacancies was thus, not made dependant solely upon the information given by the college only, for the apparent reason, to check the misuse of the liberty given by the State Government of making direct admissions, therefore, the Committee was constituted, consisting of the Registrar of the University concerned as Chairman and the Regional Higher Education Officer as member, so that they can verify and ascertain as to how many vacancies actually remain against the sanctioned strength. After this verification, the obligation was again put upon the Committee to forward its report to the University and the University, in turn, was to send the same to the State Government for approval. The State Government's approval was required, of the vacancies against which the admissions were to be made by the colleges and not the approval for making admissions, against such approved vacancies.

In case the interpretation, as given by the learned counsel for the University is taken as correct, namely, after furnishing the details of vacancies, the colleges were to take prior approval for admission, it would mean negating the liberty/right given to the University for making direct admission by the colleges after ascertaining the vacancies, which only required that wide publication in various newspapers be done and admissions be made from amongst the candidates, whose names find place in the merit list, prepared in the Common Entrance Test, but could not get admission, despite counselling being already held.

If the college was to take approval before admissions, the Government Order would have provided that after the approval of the vacancies, the admissions would not be taken unless the college seeks approval for making admissions. The State Government itself having given liberty to the college after the vacancies

are determined to grant admissions, from amongst the students from the merit list prepared by the University, there was no occasion nor any reason for seeking any further approval for making admissions by the college.

It is also to be taken note of, that for NRI quota i.e. 15% seats, no counselling was held nor could have been held as the State Government has no power to fill in the said seats.

We do not have any reason to disbelieve the information given by Dr. Ravi Kumar Misra that the University did furnish the list of vacant seats to the State Government within a week and as such, there was no occasion for the State Government, not to approve those vacancies/seats and in any case, no such order of disapproval has been cited before us, where the State Government had said that such number of seats are not vacant.

It is not the case of the respondents that the students who have been admitted under the Government Order dated 12.8.08 and who are before this Court, were admitted against the nonexisting vacancies or the vacancies which were beyond the sanctioned strength of seats or that they had not completed the required number of days of the course, but their only plea is that before taking admission, the college did not seek approval from the State Government.

In our opinion, under the Government Order dated 12.8.08, there was no requirement by the institution to seek prior approval for admission after the vacancies were determined and they were sent for approval by the University to the State Government. Unless it is found that the admission of the students was not made in accordance with the Government Order aforesaid, namely, it was not made against the existing vacancies, as observed earlier, or that the student was not entitled for being admitted, as his name did not find in the merit list prepared as a result of Common Entrance Test, held by the University or that he has not completed the studies of the required number of days, there would be no occasion to deprive such students to appear in the examinations, merely because the State Government, as argued by Dr. Ravi Kumar Misra, did not pass any formal order of approval of vacancies under Clause 3 of the aforesaid Government Order.

The learned Single Judge, interpreting the aforesaid Clause 3 of the aforesaid Government Order, observed that the students have not been able to establish as to whether the college in question has got any approval from the Government or any recommendation was made by the University to take admission. This is a complete misreading of the Government Order dated 12.8.08.

We also fail to appreciate as to how the burden of taking approval for admission from the State Government could have been placed upon the appellants who are the students and who were admitted by the colleges and how they were responsible to know, whether the Committee and/or the University has sent any report to the State Government regarding the existing vacancies in the college. It was the obligation of the Committee constituted under the aforesaid Government

Order and that of the University to take action in accordance with the directives issued therein, but if the Committee, and the University failed to do so, or the State Government even after getting the information of the unfilled vacancies, did not pass any formal order of approval and at the same time also did not object to the same, the admission so made cannot be said to be in violation of the aforesaid Government Order. It is the own case of the University that it had forwarded the recommendations regarding, existing vacancies, in the colleges, within a week, from the date of issuance of the Government Order dated 12.8.08, but it does not say, that any admissions have been made by the colleges, beyond the vacancies as were ascertained by them and communicated to the State Government.

The students thus, who are admitted cannot be deprived of their examinations, merely because of some inaction on the part of the Committee, University or the State Government, particularly, when such lapse, if any, on their part, does not affect the merits of the admission of the students.

In regard to the observation made by the learned Single Judge that the order passed by the Division Bench of this Court on 5.1.09, in Writ Petition No. 3 (MB) of 2009 was against the judgement of Full Bench, suffice would be to mention that the order passed on 5.1.09 was not based on any ground which runs contrary to the Full Bench judgement aforesaid. In fact, the learned Single Judge, without noticing the issues involved, in the Full Bench case and in Writ Petition No. 3 (MB) of 2009, appears to have made the above observation.

The distinction, as rightly pointed out by Sri D.K. Upadhyaya, is that the Full Bench was considering the case where the admissions in private unaided colleges were not made from amongst the students whose names found place in the select list prepared by the University, in pursuance of the entrance examination conducted by it, but were made of their own, from open market, on the basis of the merit, in the last qualifying examination, whereas the order dated 5.1.09 was with respect to the colleges who were already affiliated and the admissions were made in pursuance of the Government Order dated 12.8.08, which permitted direct admissions and, which was not in issue before the Full Bench.

We are, therefore, constraint to observe that there was no case for considering the judgement of the Full Bench or to see the validity of the judgement and order dated 5.1.09 in the light of the Full Bench judgement aforesaid. The observations thus, made by the learned Single Judge are not relevant at all.

Learned counsel for the State, however, submitted that the Government Order dated 12.8.08 prescribes a mechanism for making admission and there may be cases where the admissions might not have been made strictly in accordance with the directives issued therein by the colleges viz., admissions might have been made first and then the names of such students were forwarded to the University. He says that though the admissions might have been made against the existing vacancies from amongst the students, whose name did find place in

the merit list prepared under the Common Entrance Test and they might have completed the studies of the requisite number of days also, but such admissions might have been made without issuing advertisement, as required.

The aforesaid plea, besides being purely presumption, is also being strongly refuted by the appellants, as they say that required advertisements were issued and in pursuance thereof, the students whose names found place in the merit list of the Common Entrance Test applied, and their admissions were made, but we are constrained to observe that such a plea is not open to be raised at this stage for the reason that the University very well knew the names of the students who were admitted, as the list of such students was forwarded to the University and if there was any such objection, that could have been raised in the beginning, but not at this stage when the students have already completed the course, and they are to appear in the examination.

We, therefore, set aside the order passed by the learned Single Judge dated 4.9.09 and direct that the appellants shall be allowed to appear in the examination, which is scheduled to be held from 8.5.2010, subject to their eligibility otherwise.

We also take notice that in some cases, the University has also accepted the examination fee and in some cases the University has returned the fee and in some cases, some students have been allowed to appear in few papers under the interim orders passed by the learned Single Judge and thereafter, they have been stopped from appearing in the examination, namely, in Special Appeal Nos 301 of 2010 and 302 of 2010.

The University is, therefore, directed to accept the examination forms from all the institutions and shall issue the admit cards latest by 7.5.2010 to the students.

The University shall also allow all those students to appear in the remaining papers in the examination, who have already appeared in few papers.

Since the examination is to commence from 8.5.2010, the learned counsel for the University shall inform the text of this order to the University and the learned Chief Standing Counsel to the State Government, which shall be immediately complied with, without waiting for a certified copy of the same, pending its availability.

With the aforesaid observations, all the special appeals are allowed. No order as to costs.