
(2007) 08 AHC CK 0183
In the Allahabad High Court

Ranjan Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Citation : (2007) 08 AHC CK 0183

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Admissions in B.Ed. course is governed by the regulations framed by National Council for Teacher Education (Standards Norms and Procedures) Regulations 2005 (hereinafter referred to as the "NCTE"). These Regulations were amended by a notification dated 20.7.2006 wherein the norms and standards were modified. Previously the minimum eligibility for admission was 45% marks in a Bachelor's degree or in a Master's Degree, but after the amendment, vide notification dated 20.7.2006, the eligibility criteria was increased from 45% to 50%. The controversy involved in the present petition revolves around Clause 3.2.1, 3.2.3 and 3.3 of the Regulations framed by NCTE. For facility the said Regulations are quoted herein below:

3.2.1 Candidate with at least 50% marks either in the Bachelor's Degree and/or in the Master's degree or any oilier qualification equivalent thereto, are eligible for admission to the programme.

3.2.2 There shall be relaxation of marks/reservation of seats for candidates belonging to SC/ST/OBC communities and other categories as per the Rules of the Central / State Government, U.P. Administration concerned.

3.3. Admission Procedure

Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection

process as per the policy of the State Government, U.P. Administration and the University.

2. From a perusal of Clause 3.2.1, it transpires that the candidates who held 50% marks either in B.A. or in M.A. or in an equivalent examination would be eligible for admission to the programme. Clause 3.3 prescribes the procedure for the admission and stipulates that admissions would be made on merit on the basis of the marks obtained in the qualifying examination and/or in the entrance examination or through any other selection process, as per the policy of the authorities or the University, as the case may be.

3. The B.Ed. course is being conducted in two colleges in the district of Allahabad, namely, K.P. Training College and S.S. Khanna Girls Degree College. The present dispute is with regard to the denial of admission to the petitioner in S.S. Khanna Girls Degree College. The aforesaid two colleges are constituent colleges of the Allahabad University which has been declared to be a Central University by the University of Allahabad Act 2005.

4. As per Clause 3.3 of the Regulations, the University has framed its own policy providing the procedure for the admission in the B.Ed. Course. A copy of the policy framed by the University is enclosed as Annexure 4 to the writ petition. A perusal of the policy framed for the B.Ed. course 2006-07 indicates that the forms would be made available from 5.10.2006 to 17.10.2006 and that the examination would be conducted on 12.11.2006. Clause 1.1.1 of the policy indicates that a candidate must possess a minimum of 40% marks in B.A. in order to be eligible for applying for the B.Ed. course. Clause 2.2. stipulates that a candidate would be required to appear in a common entrance examination conducted by the University and if the candidate obtained 40% marks in each paper, he would qualify and would be eligible to be included in the select list. Clause 2.6 stipulates that the marks obtained in the examination papers would be, computed and added together and thereafter weightage, if any, would be given and thereafter the candidate would be placed in the select list.

5. Based on the aforesaid policy framed by the University, the petitioner applied for the B.Ed. course and appeared in the entrance examination. The petitioner secured 35% marks in one paper and 45% in the second paper. Since she did not fulfil the minimum eligibility requirement contemplated under Clause 2.2, namely 40% marks in each paper, she could not qualify and therefore, her name did not appear in the list of successful candidates.

6. It is pertinent to mention here that the examination was conducted in November, 2006. It has been stated at the Bar that within a fortnight thereafter, the results were declared in December, 2006 and thereafter the session had begun. Admittedly, the course is of one year. The present writ petition was filed on 1.5.2007, after more than 5 months from the date of the declaration of the result. The petitioner has prayed for the following reliefs, namely,

Issue a writ, order or direction in the nature of *retriorari* calling for the records of

the case and to quash the para 2.2 and 2.6 of the rules, in so far as the same provides minimum cut of marks and addition of weighting after securing minimum 40% marks as violative of regulations 2006, namely "National Council for Teacher Education (Standards Norms and Procedure) (Amendment) Regulations 2006" framed by N.C.T.E. (Annexure No. 2).

ii. Issue a writ, order or direction in the nature of mandamus directing the respondents to admit the petitioner in B.Ed. Course session 2006-2007 by treating her eligible in as much as she has obtained total 169.75 marks, whereas the lowest merit is 166 marks.

7. Heard Sri Anil Tiwari, the learned Counsel for the petitioner, Sri A.B.L. Gaur, the learned senior counsel for the University of Allahabad and Sri Vikash Budhwar, the learned Counsel appearing for the Committee of Management of Sri S.S. Khanna Girls Degree College, Allahabad.

8. The learned Counsel for the petitioner submitted that as per the regulation framed by NCTE, the minimum eligibility criteria for a candidate to apply for a B.Ed. course is, that the candidate must have a minimum marks of 50%, whereas the University had fixed 45% as the minimum eligibility criteria in the qualifying examination. The fixation of 45% marks was done by the University as per the norms fixed by the regulation of 2005 whereas it should have been 50% as per the notification dated 20.7.2006. Consequently, the learned Counsel submitted that the entire selection process conducted by the University was ex-facie illegal and against Clause 3.2.1 as amended by the notification dated 20.7.2006. The learned Counsel further submitted that the criteria fixed by the University for conducting an entrance examination was higher than the criteria fixed by the NCTE norms, that is to say the criteria fixed by the University under Clause 2.6 and 2.2 requiring a candidate to obtain a minimum of 40 marks in each paper was in violation of Clause 3.2.1 of the NCTE Regulations and therefore, submitted that Clauses 2.2 and 2.6 of the Regulations framed by the University should be quashed. The learned Counsel also submitted that out of 100 seats available in the College, 15% are filled up through the management quota and 48 seats were filled up through the common entrance examination and that 37 seats remained vacant which could not be filled up till date. The learned Counsel submitted that no useful purpose would be served in keeping the 37 seats vacant for the remainder of the academic course and therefore, the University should be directed to relax the norms of obtaining the minimum marks in the common entrance examination. Alternatively, the College may be allowed to fill the remaining seats on the basis of the select list prepared by them on the basis of the qualifying marks obtained by the candidate. In support of his submission, the learned Counsel placed reliance on a decision of the Supreme Court in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others,

9. The learned Counsel for the College supported the contention of the petitioner and further submitted that the left over seats may be filled up in accordance with

the select list prepared by the College on the basis of the qualifying marks. In support of his submission the learned Counsel for the college also placed reliance upon two decisions of this Court in Welfare Association of Self Financed Institutions and Ors. v. State of U.P. and Ors. 2005 (6) AWC 6199 and Welfare Association of Self Financed Institutes, Noida and Ors. v. State of U.P. and Ors. 2004(5) ESC 147.

10. On the other hand, Sri A.B.L. Gaur, the learned Counsel for the University submitted that/the admission procedure adopted by the University was in accordance with the procedure laid down in the policy framed by the University, which in turn, was in accordance with Clause 3.3 of the regulations framed by NTCE. The learned Counsel for the University further submitted that the University of Allahabad has been declared to be a Central University and it is the endeavour of the University to ensure that high standard of education is maintained and therefore, there was no question of reducing the standard of examination conducted by them or reducing the minimum eligibility criteria for the common entrance examination. The learned Counsel for the petitioner submitted that if the standards are lowered, it would render futile, the entire exercise of conducting a common entrance examination.

11. Having given my considerable thought in the matter and after hearing the parties at length, this Court is not at all impressed by the submission made by the learned Counsel for the petitioner. No doubt, the NCTE norms, as modified by the notification dated 20.7.2006, stipulated that the eligibility criteria for a candidate to apply for a B.Ed. course was 50% marks in the qualifying examination i.e. in the B.A. examination or an examination equivalent thereto. The University had taken the old norms fixing the eligibility criteria of 45% in the qualifying examination. In my opinion, the mere fact that the University had fixed 45% marks for applying in the B.Ed. course would not make the entire selection void or illegal for the reasons, namely, that there is no allegation made in the writ petition that a person holding 45% to 49% marks in the qualifying examination succeeded in the entrance examination and thereafter obtained an admission in the B.Ed. course. Further, the selected candidates are not before this Court. Consequently, in their absence, the selection process cannot be set aside on this score. In my opinion, the fixation of 45% as the minimum eligibility criteria for applying for B.Ed. course was a mere irregularity and was not fatal to the selection process. Further, this Court is of the opinion that once the petitioner had participated in the admission process and having failed to qualify, cannot turn around and challenge the selection process as being void. In this regard, there are a plethora of decisions of this Court as well as the Supreme Court.

In Union of India and Another Vs. N. Chandrasekharan and Another, the Supreme Court observed:

It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and

contend later when they found that they were not selected, by challenging that procedure.

In *Ramesh Rai Vs. Chairman, S.K.G. Bank and Others*, a Division Bench of this Court held:

The petitioner did not raise the issue at the time of selection and in view of the settled legal proposition as explained above, he cannot be permitted to agitate the issue merely because he could not succeed in the selection process.

Similarly, in *Rajendra Kumar Srivastava and Ors. v. Samyut Kshetriya Gramin Bank and Ors.* (2001)3 ESC 1257 a Division Bench of this Court held:

Moreover the petitioners and others appeared in the interview and thus were obviously aware of the fact that in the interview merit is also to be taken into consideration. Hence they should have protested at that time but they appeared in the interview without any protest. Hence as held by the Supreme Court in *Union of India and Another Vs. N. Chandrasekharan and Another*, they cannot subsequently turn around and challenge the selection.

In *Ambesh Kumar (Dr.) v. Principal, LLRM Medical College 1986 Su SCC 543*, the Supreme Court held that since the number of seats for admission to various postgraduate courses was limited and that a large number of candidates applied for admission, the impugned order laying down the qualification for the candidates to be eligible for being considered for selection for admissions could not be said to be in conflict with the regulations framed by the Indian Medical Council, nor was in any encroached upon the standards prescribed by the said regulations.

12. In view of the aforesaid, the submission of the learned Counsel for the petitioner to the effect that the selection process was void as per Clause 3.2.1 of the NCTE norms cannot succeed and is rejected.

13. On the question as to whether the University had fixed a higher criteria than laid down by Clause 3.2.1 of the NTCE Regulations, this Court is of the opinion that the procedure framed by the University was in accordance with the provisions of Clause 3.3 of the NCTE norms and was not in violation of Clause 3.2.1 or 3.2.2 of the NCTE Regulations.

14. In *T.M.A. Pai Foundation v. State of Karnataka AIR 2003 SC 235*, the Supreme Court recognised three modes for judging the merit of a candidate for an admission to a professional course. The Supreme Court held that an admission in a private unaided institution must be a merit based selection. The merit is, determined for admission in a professional course, by marks that a student may obtain in the qualifying examination or by a common entrance test. The Supreme Court, in paragraphs 58, 59 and 68 of the aforesaid judgment held:

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant

who seeks admission into a School, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preference shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations of this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtain at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by Government agencies.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institution. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, permissible for the university or the Government at the time, of granting recognition, to require a private unaided institution to provide for merit based selection while at the same time, give the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and post graduation non-professional colleges or institutes.

15. In the light of the aforesaid judgment, Clause 3.2.1 provides that a candidate must hold 50% marks in the qualifying examination in order to be eligible to apply for a B.Ed. course. Clause 3.2 stipulates that the admission would be made on merit on the basis of the marks obtained in the qualifying examination and/or in the entrance examination, as per the policy of the University. Based on Clause 3.3 of the Regulations, the University has framed a policy, in order to short list the candidates. It is well known that a large number of candidates apply for a limited number of seats and, in order to select meritorious candidates, it is necessary to conduct a common entrance examination in order to remove the chaff from the grain. The University, based on Clause 3.3, has framed a policy stipulating that an eligible candidate holding 45% marks in the qualifying

examination can apply for a B.Ed. course and must obtain 40% marks in each paper in order to be eligible in the select list. The question is, whether the criteria of 40% marks in each paper is arbitrary, excessive or is the said criteria in violation of Regulation 3.2.1 framed by NCTE. The submission of the learned Counsel for the petitioner is that the petitioner was eligible as per Clause 3.2.1 of the NCTE Regulations, namely, that the petitioner held more than 45% marks in the qualifying examination and therefore, was eligible for the B.Ed. course but on the basis of the criteria fixed by the University, the petitioner became ineligible. In my opinion, Clause 2.2. of the policy framed by the University is not in derogation of Clause 3.2.1 of the Regulations framed by the NCTE. In fact, Clause 2.2. of the policy, framed by the University, is in consonance with Clause 3.3. of the NCTE Regulations.

16. In *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, the Supreme Court held that for assessing the minimum necessary merit, the competent authority could lay down the minimum standard that was required and also prescribe the mode of assessment of merit of the employee who was eligible for consideration for promotion. The Supreme Court held:

For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

17. Similarly in *Vinod Kumar Verma and Ors. v. Union of India and Ors.* 2004 (1) All. ESC 19, a Division Bench of this Court held:

In our opinion, it is always open to the authorities to fix a minimum requirement, which a candidate must have before he can be considered for promotion on the basis of seniority-cum-merit. Hence it is not correct to say that only those who have some adverse entries or other adverse material in their service record can be eliminated while considering promotions on the basis of seniority-cum-merit.

No doubt one standard which the authorities can adopt for determining unfitness is the existence of adverse material in the service record of the candidate, but that is not the only way in which the authorities can declare a person unfit for being considered for promotion. The authorities can fix any objective criterion for this purpose, and this Court cannot sit in appeal over this minimum merit criterion fixed by the authorities. "The authorities must be given wide latitude in the manner and mode of fixing this minimum merit.

18. In *N.K.Agrawal and Ors. v. Kashi Gramm Bank, Varanasi and Ors.* 2003 [3] ESC 1478 a Division Bench of this Court held:

However, this not the invariable rule in giving promotions on the basis of

seniority-cum~merit. An alternative procedure can be resorted to by the authorities, and that is that they can fix a minimum objective eligibility requirement and only those candidates who possess the same are then promoted on the basis of seniority. For considering this minimum eligibility requirement there can be a selection by a Selection Committee, vide Sivaiah's case [supra]

In view of the aforesaid, this Court is of the opinion that the policy adopted by the University in fixing a minimum eligibility criteria of obtaining 40% marks in each paper, is not in derogation of Clause 3.2.1 of the NCTE Regulations. In fact, the policy framed by the University, is in accordance with Clause 3.3 of the NCTE Regulations.

19. This brings us to the last contention. Admittedly, after the selection process, 37 seats still remain vacant. The learned Counsel for the petitioner submitted that on account of the policy of the University in fixing 40% marks in each paper, it resulted in the seats remaining vacant. Further, candidates are available who have the minimum qualifying marks, as fixed under the NCTE Regulations. In such a scenario, the management should be given the permission to fill up the vacant seats through the management quota by applying the minimum qualifying marks obtained by the candidate in the qualifying examination. In support of his submission, the learned Counsel placed reliance upon the decision of the Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, wherein, the Supreme Court, in paragraph 41 held as under:

(v) When there are more applicants than the available situations/ seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although, the applicant satisfies the standards or qualifications, laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act-illegally.

20. In addition to the aforesaid, the learned Counsel for the College also placed reliance upon a decision of this Court in *Welfare Association of Self Financed Institutes, Noida and Ors. v. State of U.P. and Ors.* 2004(6) ESC 147 wherein the Court in paragraph 37 held as under:

However, it is further provided that the State Government shall permit the Management of private unaided professional colleges to grant admission to

students against the Management quota seats strictly in accordance with the option exercised by them in accordance with the notification of the All-India Council for Technical Education and the brochure published by the U.P. Technical University, which, in turn refers to Government Order dated 20th June, 2003. If, after exhausting the mode so opted by the private management, there still remain certain vacancies within the Management quota seats, the State shall permit the institutions to fill up the same from the other modes of admission as notified in the Government Order dated 20th June, 2003. The benefit of this Court is available to only those institutions which have exercised their opinion in accordance with, the brochure published by U.p Technical Education, referred to in the body of the judgment.

21. Similarly reliance placed upon in another decision in the case of Welfare Association of Self Financed Institutions and Ors. v. State of U.P. and Ors. 2005(6) AWC 6199, wherein in the Court in paragraph 18 held as under:

Having regard to the totality of the circumstances, this Court is of the opinion that no further counselling be permitted to be done by the respondents in respect of SEE-UPTU: 2005 and balance seats, (as per the chart supplied by the Additional Advocate General) may now be permitted to be filled by the private self financed institutions as the left over seats, as part and parcel of their management quota seats, on the basis of one of the recognised modes of judging the merits of the candidates. It is ordered accordingly.

22. In my considered opinion, the aforesaid judgements are distinguishable and is not applicable to the present facts of the case. I have already held that the eligibility criteria for the candidate to be eligible for admission in B.Ed. course as fixed by the University was neither in derogation nor in conflict with the regulations framed by the NCTE nor had the University, in any way, encroached upon the standard prescribed in the said regulations. On the other hand, by laying down such standards, it furthers the standard of instructions. The Supreme Court, in T.M.A. Pai's case (supra) has categorically held in paragraph 59 of the said judgment that merit is to be determined for admission in a professional course either by the marks that the student obtained in the qualifying examination or by a common entrance test conducted by the institution. The Supreme Court in para 68 of the said judgment further held that an unaided professional institution is entitled for autonomy in their administration, but at the same time they cannot forego or discard the principle of merit and therefore, even a private unaided institution was required to provide for a merit based selection.

23. In the present case, the University has conducted the examination and a merit based selection has taken place. If certain seats remained vacant, the same cannot be filled up by a back door method by cutting down the eligibility criteria and fixing the eligibility criteria of holding the minimum qualifying marks obtained in the qualifying examination. Once a standard or norm for admission is fixed, the same has to be followed. It is not possible that certain number of seats

are filled up by following the norms laid down by the University and for the remaining seats, norms fixed as per NCTE regulations are followed. In the considered opinion of the Court, the fixation of 40% marks to be obtained in each paper was neither arbitrary nor was in conflict with the regulations framed by N.C.T.E. In fact, in *Welfare Association of Self Financed Institutions and Ors. v. State of U.P. and Ors.* 2005(6) AWC 6199, the minimum marks were not prescribed as a result of which, even a candidate who had secured minus marks was declared successful and was called for counselling. The Court deprecated the practice for not fixing the minimum marks.

24. In the light of the aforesaid, the criteria of fixing a minimum 40% marks in each paper cannot be held to be arbitrary or in derogation of the norms laid by the NTCE regulations of 2006. Further, the Court cannot sit in appeal over the minimum criteria fixed by the University. The University must be given a wide latitude in the manner and mode of fixing the minimum eligibility criteria in the common entrance examination. Similar view was given by a Division Bench of this Court in *Vinod Kumar Verma's case* (supra). Consequently, the submission raised by the learned Counsel for the petitioner as well as by the learned Counsel for the College cannot be accepted.

25. However, the University should ponder over the matter and consider the impact of the seats remaining vacant for a professional course, namely, the B.Ed. course. There are only two colleges in Allahabad imparting B.Ed. course in which admission, are done through a common entrance examination conducted by the University. There are only limited seats. The candidates applying for this professional course are large in numbers. No useful purpose is served in keeping the seats vacant. Consequently, for conducting the common entrance examination in future, the University may reframe its policy, while keeping in mind, the standard of education and may reduce the minimum marks to be obtained by a candidate in the common entrance examination. A decision in this regard may be taken by the University before holding the next common entrance examination.

26. In view of the aforesaid, the writ petition fails and is dismissed. In the circumstances of the case, there shall be no order as to cost.