

(2010) 11 AHC CK 0217
In the Allahabad High Court
Case No : Special Appeal No. 1514 of 2010

Rishabh Dwivedi

APPELLANT

Vs

Registrar Central Admission Board State Entrance
Examination U.P.T.U. 2008, U.P.T.U., Lucknow and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Citation : (2010) 11 AHC CK 0217

Hon'ble Judges : F.I.Rebello, CJ and A.P.Sahi, J

Final Decision : Dismissed

Judgement

Ferdino I. Rebello, C.J.—This special appeal arises out of an order dated 19.08.2010 passed in a writ petition filed by the appellant herein, being Civil Misc. Writ Petition No. 44731 of 2010. The learned Judge, by the said order, has dismissed the writ petition holding that once the appellant has been treated as NRI and has been given the benefit of NRI quota, then he has to pay the applicable requisite fees till he completes the study.

2. The relevant facts may be set out to decide the controversy in the present case. The State Government issued a notification dated 12th August, 2004 by which five percent seats in Government Engineering Colleges and Autonomous Engineering Colleges of the State of U.P. were reserved for Non Resident Indian (hereinafter referred to as the "NRI") on payment of fee of U.S. \$ 5,000/ per annum. An advertisement was issued by the U.P. Technical University, Lucknow (hereinafter referred to as the "University") inviting applications for admission under NRI quota in B. Tech. and B. Arch. Courses. Pursuant to said advertisement, the appellant applied for admission on 11.06.2008 and specifically mentioned in the application form that he is NRI and lives in U.A.E. (Dubai). The respondent University, by its letter dated 03.07.2008, intimated to the institute, namely, Harcourt Butler Technological Institute, Kanpur (hereinafter referred to as the "institution"), that the appellant had been admitted in B. Tech 1st year in the institution under NRI quota and had been advised to report up to

07.07.2008. The institution was also informed to charge fees from the appellant as authorized for U.P.T.U. institutions in Government Order dated 12th August, 2004 issued by the State Government. The letter further recites that the University has already informed the appellant about existing fee for NRI, i.e. U.S. \$ 5,000/ per annum. The appellant took admission with respondent no.2 institution and also deposited the fee of U.S. \$ 5,000/ on 07.07.2008 and has completed his first year session in 2009 regularly and appeared in 2nd year session examination of 2010 the result of which is yet to be declared.

3. On an apprehension, that after declaration of results, the appellant would be forced by respondent no.2 institution to deposit the fee on the basis of NRI quota, he had moved an application to respondent no.2 to charge normal fee by changing his status from NRI to regular admission. The said application was moved on the ground that services of his father had been terminated, due to global economic recession and he was unable to pay the fees fixed for NRI due to unemployment of his father for a long time. The said application, according to the appellant, was rejected by the institution on 17.03.2009. The appellant filed a writ petition being Writ Petition No. 35513 of 2009 which he withdrew. Thereafter, according to the appellant, he was forced to deposit fee of U.S. \$ 5000, as directed by the administration of the Institution for admission in 2nd year. According to the appellant, said action of the institution is absolutely illegal, arbitrary and against the circumstances and economic conditions of the appellant.

4. The case of the appellant is that in the notification dated 21.01.2004 issued by the All Indian Council for Technical Education (hereinafter referred to as the "AICTE"), it is clearly written that NRI fees is not applicable for Children of Indian Workers in Gulf Countries and normal fee is applicable for this category, and that the Children of Indian Workers in Gulf Countries shall be treated as resident citizens for the purpose of charging fee. The submission of the appellant is that, other institutions are following the said rule. It is further case of the appellant that the allotment letter issued by respondent no.1 to charge NRI fee from the appellant is clearly in contravention of notification dated 21.01.2004. The appellant further submits that though he was admitted under NRI quota but NRI fee is not applicable to him as he comes under the category of "Children of Indian Workers in the Gulf Countries" and should be treated as resident citizens for the purpose of charging fee. With the above averments, the petition was filed for the relief sought therein, which has been dismissed by the order impugned in this appeal.

5. In the counter affidavit filed on behalf of respondent no.1, it is set out that the appellant was given admission under NRI quota and not under the Regulations of the AICTE contained in the notification dated 21.01.2004, which provides for admission of Foreign Nationals/Persons of Indian Origin (PIOs)/Children of Indian Workers in Gulf Countries, under supernumerary quota. For taking admission against supernumerary seats, concerned institution is required to take permission from AICTE, and only then it can admit students under

supernumerary quota. The answering respondent, it is submitted, has not made any admission against supernumerary quota, but admissions were made only against five percent seats of the sanctioned strength and not beyond the sanctioned strength. Relying upon the judgment in P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors., AIR 2005 SC 3226, it is submitted, that there is no management quota and admission can be given by the concerned institution under NRI quota and that too only five percent of the total sanctioned seats.

6. In the counter affidavit filed on behalf of respondent no.2, it is set out, apart from what has been set out in the counter affidavit filed by respondent no.1, that the appellant was admitted under NRI quota. Once admission is granted under a particular category, the same cannot be changed, as there is no provision for change of category. The appellant got admission against the seats exclusively reserved for NRIs and their sponsored students, without competing with the students appearing in the State Entrance Examination 2008. The admission to NRI quota is in terms of Government Order dated 12.08.2004.

7. The question for our consideration is, considering the contentions raised by the appellant that as he was the ward of a worker working in a gulf country, whether he is bound to pay the fee for students seeking admission under NRI quota?

8. We may first point out that the AICTE has issued a Handbook known as ""Approval Process Handbook"" containing various Chapters, which regulate, amongst others, admissions recognized by the AICTE. Relevant for us is Para 42 of Chapter VI of the Handbook, which reads as under:

"42. Institutions fulfilling eligibility criteria shall be eligible to apply for approval by the Council for admitting Foreign Nationals/Persons of Indian Origin (PIOs) and Children of Indian workers in Gulf Countries:

42.1 Fifteen percent (15%) seats in all the institution/University Departments, approved by the Council, offering technical course leading to Diploma, Degree and PostGraduate Degree in Engineering & Technology, Architecture & Town Planning, Pharmacy, Applied Arts, MBA & MCA, Hotel Management & Catering Technology, shall be allowed on supernumerary basis from amongst Foreign Nationals/Persons of Indian Origin (PIOs)/Children of Indian Workers in the Gulf Countries, over and above the approved intake, provided that 1/3rd of the 15% shall be reserved across different disciplines in the educational institution, for the Children of Indian Workers in the Gulf Countries. However, any vacant seats out of 1/3rd category shall be reverted to the quota of 2/3rd meant for PIO/Foreign Nationals."

It would, thus, be clear from the aforesaid Para, that for obtaining admission against 15 percent seats, the institutions have to apply in terms of Para 42. On an application, it is for the AICTE to grant approval or not insofar as 15 percent seats falling under Chapter VI, which is under the broad heading "Approval Process for permitting AICTE Approved Institutions to Admit Foreign Nationals/

Persons of Indian Origin (PIO)/Children of Indian Workers in Gulf Countries."

9. Chapter VII of the Handbook is under the heading "Approval Process for admission quota for Sons and Daughters of NonResident Indian(s)". We are concerned with Para 49 of said Chapter, which reads as under:

"49. The technical institutions desirous to have 5% quota for admitting sons and daughters of NRIs at a fee chargeable to NRIs shall seek the approval of the Council by making applications in the prescribed format along with the following enclosures. The applicable processing fee, as stated below shall be paid by the applicant. The 5 percent seats referred in above clause shall not be supernumerary in nature.

49.1 Under the Scheme, up to 5 percent of sanctioned intake per course shall be available for these admissions, which, however, shall not be supernumerary in nature."

From this Chapter and Paras, it would be clear that there is a difference between 15 percent seats and 5 percent seats which are carved out from the seats allotted to the institutions by the AICTE. On the contrary, 15 percent seats are in addition and are called as supernumerary seats.

10. The appellant has relied upon the Regulations contained in the notification dated 21st January, 2004, particularly Regulation 5 pertaining to fees, which reads as under:

"5. Fees. The concerned State Government/UT shall notify the tuition and other fees for candidates to be admitted under Foreign National/Persons of Indian Origin (PIOs) Category. There shall be no NRI fees. The Children of Indian Workers in the Gulf Countries shall be treated at par with resident citizens."

The entire argument of the appellant is based on the aforesaid Regulation.

11. We have considered the contentions advanced on behalf of the appellant and we are of the opinion that the same are totally misplaced. Regulation 1 (i) of the Regulations contained in the notification dated 21st January, 2004 reads as under:

"1. Short title and commencement

(i) These regulations may be called the All India Council for Technical Education (admission under supernumerary quota for Foreign Nationals/Persons of Indian Origin (PIOs)/Children of Indian Workers in the Gulf Countries, in AICTE approved Institutions) Regulations, 2004."

It is, thus, clear that these Regulations are meant for admission under supernumerary quota. It is further made clear by Regulation 2 of the aforesaid Regulations that they shall be applicable to Foreign Nationals/Persons of Indian Origin (PIOs)/Children of Indian Workers in the Gulf Countries seeking admission to AICTE approved Institutions. It would, thus, be clear that insofar as NRI quota

is concerned, these Regulations are not attracted and, as such, we are not called upon to decide the effect of Regulation 5 of the above Regulations, as that is in respect of supernumerary quota.

12. It is now settled law that professional institutions are not entitled to profiteer. However, at the same time, in order to balance their books, it is open to them to admit students against NRI quota by charging fee, which is different from the fees chargeable from the students who are admitted after passing the Common Admission Test (CAT). The students, who apply under NRI quota, do not have to undergo CAT and they do not have to face the rigorous competition like others. The money received from the students admitted under NRI quota, many a times, is used to crosssubsidize the students admitted from the weaker sections of the society and the like. The economic hardship of the appellant which made him to apply for change of quota from NRI to ordinary by itself would indicate that he was fully aware that he was admitted under NRI quota. Apart from that, letter dated 03.07.2008 from respondent no.1 to respondent no.2 itself makes it clear that the appellant was informed that he was being admitted under NRI quota and the existing fee for students admitted under NRI quota is U.S. \$ 5,000/. Having known all this, the appellant sought admission and was granted, pursued the first year course and it is only in the second year when he chose to contend that he should be adjusted in terms of Regulation 5 of the Regulations contained in the notification dated 21.1.2004 of the AICTE, which, as held above, is not applicable to admissions under NRI quota, as noted earlier.

13. The appellant has, therefore, failed to make out any case of arbitrariness on the part of respondents 1 and 2 and/or violation of any statutory provision or regulation governing admission to professional institutions under the NRI quota.

14. In the light of what has been stated above, we find no merit in the appeal and the same is, accordingly, dismissed.