

(2011) 05 AHC CK 0335
In the Allahabad High Court
Case No : Writ Petition No. 2855 (MS) of 2011

Rita Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Uttar Pradesh Admission to Educational Institutions Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes Act, 2006 — Section 4

Citation : (2011) 05 AHC CK 0335

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—As the common question of facts and law are involved in all the aforementioned writ petitions, they are taken up together for common orders.

2. Heard Mr. Sandeep Dixit, Mr. S. P. Shukla, Mr. Nagendra B. Singh, learned Counsel for the Petitioners, Mr. Rakesh Kumar Srivastava, learned Standing Counsel and Dr. Ravi Kumar Mishra, learned Counsel for the University.

3. Learned Counsel for the Petitioners submits that the Petitioners are pursuing B.P. Ed. course in the unaided institutions. Further, the students have been admitted strictly in accordance with law by the institution concerned. However, the opposite parties are not allowing the Petitioners to appear in the examination of B.P. Ed. to be scheduled with effect from 12.5.2011. It has been submitted that non-appearance in the examination would cause serious prejudice to the Petitioners and their whole one precious year would go waste. It has been further argued that for the fault, if any, of the institution, the students cannot be made to suffer. It has also been submitted that the University cannot insist the institution to follow reservation in admission, as the same has been declared as bad in law.

4. On the other hand, Dr. Ravi Kumar Mishra, Counsel for the University submits

that the students have been admitted against the Management quota to which learned Counsel for the Petitioner submits that none of the students have been admitted against 15% management quota.

5. It is not disputed at the Bar that the question involved in the instant writ petition regarding reservation in admission in the unaided private institution, has already been answered by a Division Bench of this Court in the case of Civil Misc. Writ Petition No. 22511 of 2009 Sudha Tewari v. Union of India and Ors. passed on 11.2.2011. In the said judgment and order dated 11.2.2011, this Court held that the Constitution (Ninety-Third Amendment) Act 2005, in so far as it enables to provide reservation for admission to unaided educational institutions, is violative of the basic structure of the Constitution of India, as it has been held in Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, and further, for the same reason, Section 4 of the UP Admission to Educational Institutions (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 2006 (UP Act No. 23 of 2006) has also been declared to be invalid and ultra vires, to the extent it relates to providing reservations, in admission of students to private unaided and self finance educational institutions in the State of U.P. It was provided therein that the University will consider to give admission to the Petitioner in the B.P. Ed Course on the basis of percentile on merits, in B.P. Ed Course 2008-09.

6. Once the reservation in admission has been declared to be invalid, there is no occasion for the University to refuse approval to the admission of the Petitioners on the ground of not following the reservation by the institution concerned. The University is bound by the judicial pronouncements and cannot act on its whims.

7. In view of the aforesaid proposition of law, all the writ petitions are allowed and the impugned advertisement dated 23.6.2010, so far as it provides reservation in the admission of B.P. Ed. in unaided institutions, is quashed. The opposite parties are directed to permit the Petitioners to appear in the examinations scheduled to be held tomorrow, i.e. 12.5.2011 onwards. It is clarified that in respect of any student, who has been admitted in excess of 15% Management Quota, this Court has not provided any relief to him.