

(2011) 01 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 75289 of 2010, 536, 3465, 3915 and 4027 of 2011

Sachin Arora and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 3 ADJ 893 : (2011) 2 UPLBEC 1536

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Abhinav Ojha, for the Appellant; Anil Tiwari, Saumitra Singh and K.R. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—These five petitions have been preferred by candidates who had appeared in the Joint Entrance Examination Test of 2010 for B. Ed. Course and upon being successful had been called for counselling. They were issued letters of allotment and they contend that they accordingly approached their respective institutions and were given admission. However, under the Notification dated 29th September, 2010 which was published in the Newspaper on 30th September, 2010 their admissions have either been cancelled or they are not being permitted to pursue their studies on the ground that their admissions have not been finalized. The Petitioners contend that they were admitted and they have been pursuing their studies and therefore their discontinuance in mid session is unwarranted under a Notification without being given them any notice or opportunity. They, therefore submit that the orders are in violation of principles of natural justice.

2. The second ground of challenge is that there is no fault on the part of the Petitioners and they have deposited their advance fees as well as registration fees and in the absence of any default on their part their admissions cannot be

treated to have been cancelled.

3. It is further submitted on behalf of the Petitioners that even if they do not have a confirmation slip then the same would only make their admission incomplete and would not result in an automatic cancellation. Apart from this, it was also submitted during the course of arguments through an affidavit filed in Writ Petition No. 536 of 2011 that this deficiency had occurred on account of mistakes by the Lucknow University and the respective colleges and almost four thousand candidates who had appeared for the first counselling between 3rd August, 2010 and 20th August, 2010 had not been issued confirmation slips. The submission is that this being a general defect the Petitioners cannot be deprived of their benefit to pursue their studies.

4. Learned Counsel for the Petitioners have further placed reliance on the orders dated 7.10.2010, 20.10.2010 and 14.12.2010 passed in Writ Petition No. 10052 of 2010 and the other connected writ petitions relating to similar matters pending before the Lucknow Bench wherein certain interim protections were granted to such candidates whose admissions were affected by the Notification dated 29/ 30th September, 2010. It is urged that the Petitioners also deserve the same protection and hence appropriate orders be issued in this respect.

5. In order to ascertain the correctness or otherwise of these allegations affidavits were called for from the Lucknow University which have been filed in the leading writ petition No. 536 of 2011 and the learned Counsels for the other Petitioners have had access to them. They have advanced a common submission and the Lucknow University has also raised a common defence. Learned Counsel for the Lucknow University Sri Saumitra Singh submitted that the number of seats namely the intake capacity of the colleges is fixed. The allotment orders were issued with a clear instruction that the admissions would become final only on confirmation of seats according to the procedure prescribed. Failure to adhere to the aforesaid directives would deprive the candidate of his admission. He further submits that the Principals of the respective colleges did not adhere to these directives and appear to have defaulted or deliberately allowed the candidates to pursue their course without confirmation slips. The candidates have also committed default by not complying with the provisions of confirmation, and therefore there is no fault on the part of the University and the allegations made by the Petitioners are unfounded.

6. He further contends that the orders passed by the Lucknow Bench of this Court are interim orders and they do not adjudicate the aforesaid issue relating to the procedure of confirmation. He submits that no final relief has been granted by the Lucknow Bench and therefore the Petitioners cannot claim any benefit of the same.

7. His further submission is that if such admissions are permitted then the same would amount to increasing the number of seats and intake capacity and therefore no such orders should be passed as the number of seats cannot be

increased. It was after having noticed such discrepancies that the notification was issued on 29th September 2010 itself and therefore the Petitioners cannot take advantage of any lapse of time thereafter. The Petitioners according to Sri Singh were fully aware of the terms and conditions that were applicable for finalizing the provisional admission after allotment and they having failed to comply with the said conditions, no relief can be prayed for against the said conditions contained in the brochure.

8. Sri K.R. Singh has put in appearance on behalf of the Principal, Handia P.G. College, Allahabad in Writ Petition No. 536 of 2011 and 75289 of 2010 and has filed an affidavit explaining the facts and contending that the Petitioners' admissions were only provisional and were not final and that they had been admitted without confirmation slips. He has also urged that the final select list does not contain name of these Petitioners therefore the claim set up by them is unfounded.

9. I have heard learned Counsel for the Petitioners in all the writ petitions, Sri Saumitra Singh for the Lucknow University, Sri K.R. Singh for the Principal of Handia P.G. College, Allahabad, Sri Ajit Kumar Singh for the Purvanchal University, Sri Sanjay Kumar Singh for the Agra University, Sri Anurag Khanna for the Chaudhary Charan Singh University, Meerut and Sri Neeraj Tiwari for the Chhatrapati Shahuji Maharaj University, Kanpur as well as the learned standing counsel for the State.

10. Before proceeding to deal with the submissions raised and the orders passed by the Lucknow Bench, it would be appropriate to clarify the requirement under the procedure for counselling. The affidavit filed on behalf of the Lucknow University captioned as short counter-affidavit dated 19.1.2011 sworn by Sri G.P. Tripathi, the Registrar of the Lucknow University encloses the procedure for counselling in two phases as also the procedure for seat confirmation.

11. To begin with, the Petitioners rely on their letter of allotment to contend that they have complied with all the terms and conditions as prescribed therein and therefore the Notification issued on 29/30th September, 2010 cannot take away their rights of allotment and admission. The following condition appears to have been placed in every allotment letter:

Even if the amount of college fee is less than Rs. 5,000.00 or the candidate is allowed zero-fee he/she has to report to the fees deposition counter within three days and get a receipt with negative balance to confirm his/her allotment. The excess amount if any will be refunded to the candidate by the respective college. All candidates have to report to the college fees deposition counter at the counselling centre without which the seat allotment will be incomplete.

12. The procedure prescribed for counselling has to be carried out where after a letter of allotment is issued. In the petitions before this Court there is no dispute with regard to the fact that the Petitioners did appear in the counselling and were issued letters of allotment. The disputed part is related to the confirmation of

seats. The seat confirmation procedure as contained in the information brochure is quoted herein below:

SEAT CONFIRMATION FEES

- (1) The allotment letter will be issued to the candidates the day after the choice filling has been carried out.
- (2) All candidates allotted a seat have to deposit a Seat Confirmation fees at the SEAT CONFIRMATION COUNTER within four days of choice filling.
- (3) The amount of seat confirmation fees will be mentioned on the candidate's allotment letter.
- (4) If the candidate fails to deposit the seat confirmation fees within the stipulated time, he/she will have no claim over the seat any more.
- (5) The candidates have to report to the SEAT CONFIRMATION COUNTER for confirming their seats even if the amount of college fees is less than the advance fees of Rs. 5000.00.
- (6) Several aided colleges have fees less than the advance fees of Rs. 5000.00. from the respective college after they report there.

13. The aforesaid procedure particularly condition Nos. 2, 4 and 5 admittedly has not been complied with in relation to any of the Petitioners. The Petitioners have contended that they were under a bona fide belief that their admissions have been finalized by virtue of allotment and later on also a case had been developed that there was some default in the server of the Lucknow University at the time of counselling and secondly almost four thousand students had not been issued confirmation slips who has appeared in the first round of counselling between 3rd August, 2010 and 20th August, 2010.

14. The aforesaid facts were stated in a supplementary affidavit captioned as second supplementary affidavit dated 18.1.2011. The Lucknow University has filed a supplementary counter-affidavit to the same on 21.1.2011 denying the said allegations and further categorically stating as follows:

Paragraph 16: That the contents of paragraph No. 6 of the second supplementary affidavit is vehemently denied. It is absolutely wrong to allege that all the students (almost 4,000 in entire U.P. who appeared in the 1st day of counselling have not been issued with the negative balance slip/confirmation slips by the University, except the letter of allotment. In this regard it may be pointed out that when the aforesaid case was listed on 19.1.2011, the Hon'ble Court was pleased to make a query regarding the said facts, in pursuance to the said query, confirmation were made by the Lucknow University and a E mail was sent to the counsel concerned specifically stating therein that 1134 confirmation slips were issued to the candidates on 4.8.2010, 2517 confirmation slips were issued to the candidates on 5.8.2010 and 2386 confirmation slips were issued to the candidates on 6.8.2010. It has also been clarified that the counselling has

started on 3.8.2010 and the 1st set of allotment letters and confirmation letters were issued on 4.8.2010, hence 4.8.2010 was the 1st date of issuance of allotment and confirmation letters. A photocopy of the E mail alongwith the List of candidates who have been issued Allotment Confirmation/Seat Acceptance slips on 4.8.2010, bearing their Roll Nos. , rank and category, as sent by the State Coordinator for JEEB. Ed. 2010 examination Lucknow University is annexed herewith and marked as ANNEXURE-SCA-1 to this affidavit. However, the List of candidates who were issued Allotment Confirmation/Seat Acceptance Declaration on 5.8.2010 and 6.8.2010 shall be supplied to the Hon"ble Court if so desired as the same are bulky documents.

15. The aforesaid facts stated in the supplementary counter-affidavit have not been successfully rebutted by the Petitioners.

16. A perusal of these documents and the affidavit filed on behalf of the Lucknow University, it is clear that either the Principals of the Institutions ignored the contents of the letter of allotment and the procedure of confirmation or the students themselves are to blame for it. This shortcoming in the opinion of the Court did not exist on the part of the Lucknow University. It has also been stated in the short counter-affidavit of the Lucknow University that the confirmation slips that have been issued in favour of candidates, taking that into consideration, no excess candidate has been allotted beyond the intake capacity of the colleges in question. It is the duty of every college to finally admit only such students who have confirmation slips and any admission without completing the said procedure would be invalid in terms of the conditions imposed in the letter of allotment read with the procedure for confirmation as quoted hereinabove.

17. The University appears to be correct in its stand, inasmuch as, a seat confirmation information is a sine-qua-non for the purpose of finalizing an admission. According to Condition No. 5, a candidate has to report to the seat confirmation counter. It has further been provided that if the candidates fail to deposit the confirmation fees, no claim over the seat can be made any further. A combined reading of these provisions therefore categorically makes it clear that the admission will become final only on a confirmation slip being issued from the counter and not by mere allotment.

18. The interim orders passed by the Lucknow Bench have nowhere discussed this aspect of the matter, and therefore, on the basis of general allegations made by the Petitioners, the aforesaid interim orders will not come to their aid. The Petitioners have lost their right to continue and as a matter of fact they are blocking the passage of those students who have complied with the terms and conditions of confirmation. The allegation that four thousand students had been suffering was a mere wild allegation that has been dispelled on a reading of the categorical averments contained in the affidavit of the Lucknow University as quoted hereinabove. The Petitioners have not come forward with any other details that may make any allowance for entertaining any further argument on

this issue.

19. It is to be noted that even if the candidate is not required to deposit any additional fees, he has to give a certificate of zero balance fees in order to ensure that his admission has been done in accordance with the procedure prescribed. The University has nowhere discriminated any student as per the records and the information available in this set of writ petitions.

20. The contention of the Petitioners that those who are lower in merit have been later on given admission would not be an argument to be entertained, once it is found as a matter of fact that the Petitioners did not have a confirmation slip. This might have happened on account of an overdoing on the part of the Institutions who were in haste to accommodate candidates whom they found to be convenient. The students have also clearly defaulted and it is quite possible that they have been assured by the Principal of their so called admission becoming final on allotment. They may not have pursued the matter any further. This by itself cannot confer any right of admission on the Petitioners. The admission will be complete only after the confirmation slip is issued.

21. Learned Counsels have relied on decisions in relation to other admissions to contend that such admissions can be regularized as there does not appear to be any major fault on the part of the Petitioners. The aforesaid decisions nowhere relate to such terms and conditions as prescribed presently and quoted hereinabove. No admission can be taken against the provisions as advertised as doing so would violate Article 14 of the Constitution of India. The candidates who have confirmation slips are being made to stand outside and those without them are sought to be accommodated. This litigation is therefore a clear generation of either the unscrupulous Principals of the respective colleges or on account of the candidates having defaulted themselves. It is for this reason that the Lucknow Bench had called upon the Lucknow University to seek information from the colleges concerned to furnish the entire information as indicated in the order dated 14.12.2010.

22. It is to be noted as pointed out by Sri Saumitra Singh that in respect of third counselling that was carried out the counselling letters categorically in column 5 narrated that allotment/confirmation seat acceptance declaration slips have to be obtained by the respective candidates otherwise under the computerized system of counselling, the absence of any confirmation slip, would automatically bring about the cancellation of the candidature and a fresh allotment shall be made. This would be evident from the Note appended to the third counselling letters relating to one Raghvednra Mishra, Roll No. 40151225 who is a Petitioner in Writ Petition No. 4282 of 2011 being disposed of separately by another judgment today itself.

23. Accordingly, this Court does not find any reason to quash the Notification dated 29/30th September, 2010 nor any relief can be granted to the Petitioners.

24. The writ petitions lack merit and are hereby dismissed.