
(1995) 12 AHC CK 0074
In the Allahabad High Court
Case No : Writ Petition No 508 of 1995

Sameer Kumar Singh

APPELLANT

Vs

University of Gorakhpur and Others

RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 28, 45

Citation : (1995) 12 AHC CK 0074

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—In this case the petitioner was refused admission in Research Programme in the discipline of Geography leading to the award of a Ph. D. Degree, in the University of Gorakhpur, on the ground that his name was included in the list of students who were earmarked for the purpose of prohibiting admission, as would be apparent from Annexure6 to the writ petition. In the said communication which was made to the different department of the University it was stipulated that the said twenty one students should not be allowed admission in any course in the said University. Admittedly, the petitioner was admitted in M.A. in Geography from the said University. However, in the meantime the petitioner's admission was sought to be cancelled, which was challenged by means of writ petition No. 43708 of 1993 in which interim order of stay of the operation of the said order of cancellation was passed and by virtue whereof he had continued his study and has passed the examination. The petitioner in an earlier writ petition, being Civil Misc. Writ Petition No. 33539 of 1993 had challenged the said instruction contained in Annexure6 to the present writ petition, so far as the petitioner is concerned, by which the petitioner was prohibited admission in any course under the University. The said writ petition is also pending, The petitioner has now claimed admission to Research Programme in Geography and the same was refused by an order dated 3uy1994 which is Annexure11 to the writ petition.

2. Learned counsel for the petitioner points out while translating the said annexure into English that the admission was refused solely on the ground that the petitioner's name was included in the said list, which is Annexure 6 to the writ petition, subject matter of challenge in Writ Petition No. 33539 of 1993. Sri Shyamal Narain, learned counsel appearing on behalf of the petitioner contends that the said refusal is wholly without jurisdiction and can not be sustained and the authority can not rely on the same.

3. Sri Dilip Gupta, learned counsel appearing for the University contends that since the petitioner's name is included in the said communication, therefore, he can not be admitted. According to him the admission to the Research course depends on various factors. However, very fairly he conceded that the other factors have not been considered. In the present case that admission was refused only on the sole ground of inclusion of the name of the petitioner in the said instructions as contained in Annexure 6 to the writ petition. He contends further that inclusion of the name of the petitioner in the list, wherein he has been earmarked as "undesirable element" for being admitted in the University is also a factor which is to be taken into account. The said list was prepared by the Admission Committee, which is the authority to do so, after considering the past conduct of the petitioner which is to be thoroughly unincongenial for atmosphere in the campus of the University.

4. It appears from the provisions contained in the U. P. State Universities Act, 1973 that the Admission Committee is formed according to Section 28 of the said Act. The said section provides for constitution and power of the Admission Committee. In order to appreciate the situation Section 28 is quoted below :

"22. Admissions Committee.(I) There shall be an Admissions Committee of the University, provided for in the Ordinances.

(2) The Admissions Committee shall have the power to appoint such number of subcommittees as it thinks fit.

(3) Subject to the superintendence of the Academic Council and to the provisions of subsection (5), the Admissions Committee shall lay down the principles or norms governing the policy of admission to various courses of studies in the University and may also nominate a person or a subcommittee as the admitting authority in respect of any course of study in an Institute or a constituent college maintained by the University.

(4) Subject to the provisions of subsection (5) the Committee may issue any direction as respects criteria for methods of admissions (including the number of students to be admitted) to constituent colleges maintained by the State Government and affiliated or associated colleges, and such directions shall be binding on such colleges.

(5) Notwithstanding anything contained in any other provisions of this Act, admission to medical and engineering colleges and to courses of instruction for

degrees in education or Ayurvedic and Unani Systems of medicines (including the number of students to be admitted), shall be regulated by such orders (which if necessary may be with retrospective effect, but not effective prior to January 1, 1979) as the State Government may, by notification, make in that behalf :

Provided that no order regulating admissions under this subsection shall be inconsistent with the rights of minorities in the matter of establishing and administering educational institutions of their choice.

(6) No student admitted to any college in contravention of the provisions of this section shall be permitted to take up any examination conducted by the University and the Vice-Chancellor shall have the power to cancel any admission made in such contravention."

A perusal of the section does not indicate that the said Committee has any authority to take up any disciplinary proceeding nor does it indicate that they can declare certain students as undesirable. According to Sri Gupta, subsection (3) to Section 28 of the Act provides that the Admissions Committee shall lay down the principles or norms governing the policy of admission to various courses studied in the University. It is difficult to accept this contention of Sri Gupta that the power to lay down principles or norms governing the policy of admission includes power to declare certain class of students undesirable for admission. It is also very difficult to accept the contention of Sri Gupta, that such a declaration amounts to laying down the principles or norms governing the policy of admission. In my view, therefore, the said instruction or declaration as contained in Annexure 6 to the writ petition does not come within the ambit of power conferred upon the Admissions Committee under Section 28 of the Act.

5. On the other hand Section 45 of the Act deals with the provisions for admission of students which lays down certain conditions who seeks admission. In order to appreciate the situation the provision of Section 45 of the Act is reproduced below :

"45. Admission of students.(I) No student shall be eligible for admission to the course of study for a degree unless

(a) he has passed

(i) the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, or of any University or Board incorporated by any law for the time being in force ; or

(ii) any examination, or any degree, conferred by any other University, being an examination or degree recognised by the University as equivalent to the Intermediate Examination or to a degree of the University ; and

(b) He possesses such further qualifications, if any, as may be specified in the Ordinances :

Provided that the University may prescribe by ordinances any lower

qualifications for admission to a degree in Fine Arts.

(2) The conditions under which students may be admitted to the diploma course of the University shall be prescribed by the Ordinances. "

(3) The University shall have the power to recognise (for the purposes of admission to a course of study for a degree), as equivalent to its own degree any degree conferred by any other University or, as equivalent to the intermediate Examination of any Indian University, any examination conducted by any other authority.

(4) Any student whose work or conduct is unsatisfactory may be removed from the University or any institute or a constituent college or an affiliated or associated college in accordance with the provisions of the Ordinances,

Subsection (4) of Section 45 indicates that the students may be removed from the University or an Institute or a Constituent college or an affiliated or associated college in accordance with the provisions of the Ordinances, in case the work and conduct of such students is unsatisfactory. By no stretch of imagination Annexure 6 to the writ petition can be said to be a step towards such process, as contemplated in subsection (4) of Section 45 of the Act. Even then it can not be said that this power under Section 45(4) can be exercised by the Admissions Committee. Inasmuch as such step is contemplated at a stage post admission.

6. Sri Gupta, however, has not been able to point out any provision from the Act or Ordinance, by which the Admissions Committee has been empowered to issue such a declaration or instructions as contained in Annexure 6 to the writ petition. The procedure for admission, enrollment and continuance has been provided in the University of Gorakhpur Ordinance Part A (i) General deals with the admission of students to teaching departments of the University which can be made only by the Admission Committee. But the said provision also does not indicate anything to empower the Admission Committee to declare certain students undesirable for preventing their admission. Para 7 of the said part requires the students to comply with certain formalities for seeking admission to a teaching department. That also does not lay down any disqualification which might be taken into account for declaring the student, before he is admitted, that his admission is undesirable. Chapter dealing with the discipline in the said part also does not contain anything by which the students seeking admission can be declared undesirable. The said procedure deals with the matter by which the student who is found guilty could have certain punishment, as prescribed in para 2 thereof. A perusal of paras 1 and 2 relating to discipline indicates that a Student is required to maintain certain norms as contained in para 1 and if he failed to do so he may be punished, The punishment does not contain anything to prevent a person seeking admission in future. In the present case there was neither expulsion nor rustication. So far as the petitioner is concerned, at any point of time, A student can be prohibited from attending classes for a period not exceeding six weeks.

But there is no provision that a student can be prohibited from seeking admission in future. In any case the said provision deals with the post admission stage and not preadmission stage. Even if a student is found undesirable, still his admission would be subject to the conditions contained in Chapter 1 and he is liable to be subjected to such disciplinary proceeding and punishment if he is guilty of misconduct as contemplated therein.

7. Para A(ii) deals with Admission of Research students for the Degree of Doctor or Philosophy. Therefore so far as PartA(i) is no more necessary for the purposes of admission in Research Scheme. Even though Para A(i) is relevant for the purposes of deciding the validity of instructions or declaration as contained in Annexure6 to the writ petition, which I have already held that it is wholly without jurisdiction and cannot be sustained.

8. Therefore the said declaration as contained in Annexure6 having been found to be void, the refusal for petitioner's admission to the Research scheme only on the ground of inclusion of his name in the said Annexura6 to the writ petition cannot be sustained.

9. Moreover the provision for admission of Research student, as I have not been able to find out that the admission can be denied on the alleged have examined, I ground, on which it has been sought to be refused. It does not contemplate any provision for refusing admission on the ground that the admission of a student is undesirable. However it is admitted position that there might the several other factors, on which the question of admission of students depends. It is for the Admissions Committee for Research students, who have to be satisfied on different factors, relevant for such admission. The past history of the student that he is undesirable without any appropriate finding to that extent cannot be sustained. The post admission misconduct might be a disqualification in continuance of studies.

10. Therefore the order dated 3091994, contained in Annexure11 to the writ petition cannot be sustained and, as such is quashed. Accordingly a writ of certiorari do issue quashing the impugned order dated 3091994, Annexure11 to the writ petition. The Admissions Committee however, shall be free to reconsider the case of the petitioner and recommend his admission, if not already recommended. In case there is a recommendation made by the Admissions Committee in that event the petitioner should be allowed to have the benefit of such recommendation in accordance with law. Thus Writ Petition No. 502 of 1995 is disposed of.

11. In view of the above judgment the Writ Petition No. 33539 of 1993 stands allowed. The impugned order dated 2181993, as contained in the letter dated 891993, being Annexure1 to Writ Petition No. 33539 of 1993, so far as the petitioner is concerned, is hereby quashed. The said writ petition stands allowed to that extent.

12. By reason of the disposal of the above two writ petitions, Writ Petition No.

45708 of 1993 appears to have become infructuous, by reason of the fact that the petitioner was allowed to continue his studies in pursuance of the interim order already granted and that he has already passed his examination and, therefore the said writ petition has lost its purpose and, as much, is dismissed as having become infructuous.