

(2011) 02 AHC CK 0221

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1605 of 2011

Shukdeo Prasad Tripathi, Mahavidyalaya Bhatahi Khurd,
Kushinagar through its Principal and another

APPELLANT

Vs

State of U.P.through its Secretary (Higher Education) Civil
Secretariat, Lucknow and others

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0221

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

Final Decision : Disposed Of

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the parties.

2. An Affidavit in response to the order dated 22.2.2011 has been filed today clearly taking a stand that the Government Order dated 16.8.2010 was never intended to increase the number of seats which has been fixed under the Statute of the respective Universities. In the instant case, Statute 13.26 clearly prescribes that the number of seats would be a minimum of 60 and maximum of 80 with the permission of the ViceChancellor. The contention on behalf of the petitioner is that increase of 20% should be read beyond the strength of 80 students as per sanction.

3. The Affidavit filed today by the State Government, therefore, clarifies the decision in relation to the Government Order dated 16.8.2010 and, as such, the calculation of 20 person cannot be over and above the maximum number of 8 seats as per the Statute.

4. It is trite law that an executive instruction or a Government Order cannot override the provisions of subordinate legislation and the Statute having not been amended, it is not possible for the State Government to create additional seats as urged by the petitioner. In the absence of any amendment in the Statute, the aforesaid argument cannot be accepted.

5. Accordingly, the petitioner institution would be entitled to a maximum 560 seats as sanctioned by the University and explain in the Government Order dated 27.1.2011 read with the order dated 4.2.2011.

6. The writ petition stands disposed of accordingly.

7. The University shall, therefore, proceed in the light of the observations made hereinabove in relation to the demand of admission form by the petitioner institution.