
(2009) 11 AHC CK 0080
In the Allahabad High Court

S.M. College and Others

APPELLANT

Vs

M.J.P. Rohilkhand University and Others

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 3 AWC 2464 : (2010) 2 UPLBEC 1615

Hon'ble Judges : B.K. Narayana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Narayana, J.—Heard Sri P. S. Baghel learned senior counsel assisted by Sri Gautam Baghel, Sri N. K. Pandey, Sri Anurag Khanna, Sri Sunil Kumar and Sri Pankaj Satsangi for the petitioners; Sri S. G. Hasnain, Additional Advocate General counsel for the respondent No. 3 and Sri Vivek Verma for the respondent Nos. 1 and 2.

2. Since common questions of law and facts arise in all these writ petitions they are therefore being taken up together and being disposed of by this common order. The leading petition in these bunch of writ petitions is Writ Petition No. 28718 of 2008, S. M. College, Chandausi and Ors. v. M.J.P. Rohilkhand University, Bareilly and Ors.

3. The petitioners in all these writ petitions are colleges affiliated to the M. J. P. Rohilkhand University, Bareilly (hereinafter referred to as the University) imparting education in several Job-oriented courses including B.Ed. It is not in dispute that the courses imparted by the petitioners are recognised by the National Council for Teacher Education (hereinafter referred to as for the sake of brevity N.C.T.E.). The important issue involved in all these writ petitions is that whether the admission to private unaided (minority and non-minority) colleges imparting education for Bachelor of Education Courses recognized by N.C.T.E. and affiliated to the University can be made by any method other than by holding

a common entrance test either by the State/Universities or by all the colleges of the State coming together and whether the admission made by affiliated colleges to B.Ed. on the basis of individual entrance test are valid or not.

4. The facts which are not in dispute in the instant bunch of writ petitions are that the petitioners have admitted large number of students to Bachelor of Education course run by them for the session 2006-07 who have not been selected in common entrance test conducted either by the State or by the University or by all the colleges of the State coming together but on the basis of individual entrance test. The reason for making such admissions according to the petitioners is said to be the failure of the University to recommend requisite number of candidates for admissions in the B.Ed. course run by the petitioners even after third round of counselling and even thereafter.

5. The action of the University which is impugned in these writ petitions is its refusal to recognise the admission of students in the B.Ed. 2006-07 made by the petitioners through separate entrance tests conducted by them and to permit such students to appear in the final examination of B.Ed. 2006-07. It is also not in dispute that students admitted by the petitioners were permitted to appear in the B.Ed. final examination under the interim orders of this Court but their results have not been declared and now a prayer for declaring the results has also been made.

6. In the counter-affidavit filed on behalf of the University it has been stated that no fairness and transparency has been observed in admitting the students against seats on which the candidates recommended by the University legitimately did not join. The Full Bench of this Hon"ble Court in Civil Misc. Writ Petition No. 34114 of 2007, Tuples Educational Society and Sri Sandeep Sangu Vs. State of U.P. and Chaudhary Charan Singh University, , has held that admission to private unaided (minority and non-minority) colleges imparting education for Bachelor of Education Course, recognized by N.C.T.E. and affiliated to the University can be made only through the entrance examination conducted by the University providing list of students through counselling to the colleges. Against the Full Bench judgment and order, special leave petitions including Civil Appeal No. 10872 of 2008 were preferred before the Supreme Court. The said special leave petitions were disposed of by the Apex Court in view of the stand taken by the State and the concerned Universities, by the following order passed in Civil Appeal No. 10872 of 2008:

Heard learned Counsel for the parties.

The stand of the State of Uttar Pradesh and the Universities is that they are going to hold examination for the students admitted in 2005-06 of Purvanchal Vishwavidhyalaya and in 2006-07 of Agra and Meerut Universities. In view of this stand, learned Counsel appearing on behalf of the petitioners are permitted to withdraw these petitions and the same are accordingly disposed of leaving the question of law open to be decided in an appropriate case.

7. In pursuance of the aforesaid stand taken by the State Government and the concerned Universities which were parties to the civil appeals, namely Purvanchal, Meerut and Agra Universities, the students admitted in B.Ed. course to the colleges affiliated to the aforesaid Universities directly by the affiliated colleges concerned were allowed to appear in the B.Ed. final year examination and their results were also declared.

8. The State of U.P. took a similar stand in its counter-affidavit.

9. Learned Counsel for the petitioner submitted that once the State Government took the stand to permit the students admitted to B.Ed. 2005-06, by colleges affiliated to Purvanchal University and to B.Ed. 2006-07 by colleges affiliated to Agra and Meerut Universities directly on the basis of separate entrance test, the State Government cannot be permitted to take a different stand in respect of similar set of students admitted to B.Ed. course 2006-07 by the petitioners directly as the same will be discriminatory, and contravene Article 14 of the Constitution of India.

10. Learned Counsel for the petitioner further submitted that a Division Bench of this Court while dealing with similar admissions as those which are subject-matter of the instant bunch of writ petitions, vide its judgment and order dated 16.5.2009, passed in Writ Petition No. 2417 (M/B) of 2007, Bansidhar Mahavidyalaya and two others v. State of U.P. and Ors. held that in view of the stand of the State before the Apex Court in Civil Appeal No. 10872 of 2008 and the directions issued by the Apex Court permitting similarly placed students to appear in the B.Ed. examination there was no ground to cancel the admissions so made for the academic session 2006-07 and directions were issued to the University to declare the result of the students who had appeared in the examination pursuant to the interim orders of this Court.

11. Learned Counsel for the petitioner further submitted that the case of the petitioners is similar and identical to that of the students whose admissions to B.Ed. 2006-07 were the subject-matter of Writ Petition No. 2417 (M/B) of 2007 as the said students had also been admitted by the concerned colleges directly on the basis of separate entrance test conducted by the respective colleges and in fact the students admitted by the petitioners stand on a better footing as they had appeared in the common entrance admission test conducted by the University although they were not allocated the petitioners' colleges.

12. Sri S. G. Hasnain, learned Additional Advocate General appearing for the State respondent vehemently urged before this Court that the issue involved in this bunch of writ petitions is no longer res-integra and stands fully concluded by the Full Bench decision of this Court in the case of Tuples Educational Society and Anr. v. State of Uttar Pradesh through its Principal Secretary, Higher Education Government of U.P., Lucknow and Anr.

13. Sri Hasnain further submitted that the Full Bench in the case of Tuples Educational Society (supra) has held that the admissions to private unaided

(minority and non-minority) colleges imparting education for Bachelor of Education Courses recognized by N.C.T.E. is and affiliated to the University cannot be made by any method other than by holding a common entrance test either by the State/Universities or by all the colleges of the State coming together.

14. Sri Hasnain next submitted that the Apex Court has left the question of law as decided in the Full Bench decision open and had merely permitted the appellants to withdraw the civil appeals in view of the stand of the State of U.P. and the Universities that they were going to hold examination for all the students admitted to B.Ed. 2005-06 and B.Ed. 2006-07 by the colleges affiliated to the concerned Universities.. The Apex Court while disposing of the civil appeals filed before the Apex Court against the Full Bench decision of this Court rendered in Tuples Educational Society's case had not issued any directions in the matter as observed by the Division Bench of this Court in the case of Bansidhar Mahavidyalaya.

15. Sri Hasnain next contended that the State took the stand to hold the examination for the students admitted in B.Ed. 2005-06 and B.Ed.2006-07 before the Apex Court only after the concerned Universities had resolved to recognise the admissions made to B.Ed. course of 2005-06 and 2006-07 by the affiliated colleges directly whereas in the instant case the University has not agreed to recognise the admissions so made by the petitioners or to permit the students so admitted to appear in the final B.Ed. examination or to declare their results. He further submitted that in the case of Purvanchal, Agra and Meerut Universities, the students admitted to B.Ed. course by the affiliated colleges were permitted to appear in the B.Ed. examination 2005-06 and 2006-07 by the concerned Universities whereas in the case in hand the students have appeared in the examination under the interim orders of the this Court and hence the students admitted by the petitioners cannot be classified in the same category as the students admitted by the colleges affiliated to the Purvanchal, Agra and Meerut Universities.

16. Learned Counsel for the University submitted that each and every petitioner was allotted students as per its" sanctioned strength. However, a small number of such students were not given admission by the petitioners and on the pretext that some seats in the B.Ed. 2006-07 in the petitioners" institution had not been filled up on account of the failure of all the recommended students to take admission, the petitioners illegally filled up the said seats directly on the basis of separate entrance tests conducted by them.

17. On the basis of the submissions advanced on behalf of the parties the two issues which arise for consideration in these writ petitions are as follows:

1. Whether the admission to private unaided (minority and non-minority) colleges imparting education for Bachelor of Education Courses recognized by N.C.T.E. and affiliated to the University can be made by any method other than

by holding a common entrance test either by the State/Universities or by all the colleges of the State coming together, as provided in P. A. Inamdar's case?

2. Whether the State's action in taking two different stands in respect of the students admitted in B. Ed., by colleges affiliated to Agra, Bundelkhand and Meerut Universities on the basis of separate entrance test and those admitted by the petitioners by following the same procedure is discriminatory and violates Article 14 of the Constitution of India?

18. I have examined the submissions made on behalf of the parties and have perused the record.

19. It is an admitted fact that the petitioners admitted students to the B.Ed. course 2006-07 directly on the basis of individual entrance test conducted by them and not on the basis of the common entrance test held by the University.

20. The fact that the first issue involved in these bunch of writ petition stands concluded by the Full Bench decision of this Court in the case of Tuples Educational Society cannot be disputed. The Full Bench while considering the validity of the admissions made by the colleges affiliated to the Rohilkhand University in the B.Ed. 2006-07 directly on the basis of individual entrance test held that admission to private unaided (minority and non minority) colleges imparting education for Bachelor of Education Course, recognized by N.C.T.E. and affiliated to the University cannot be made by any method other than by holding a common entrance test either by the Universities or by the colleges of State coming together as provided in P. A. Inamdar's case and it is not at all open to the affiliated colleges in the absence of any common entrance test held by all the colleges coming together or a common entrance test conducted either by the Universities or State Government to admit students to the B.Ed. on the basis of individual entrance test.

21. Thus, the decision of the university not to recognize the admissions made by the petitioners to the B.Ed. courses 2006-07 on the basis of individual entrance tests conducted by them and not on the basis of a common entrance test held by the University and not to permit the students so admitted to B.Ed. 2006-2007 to appear in the final examination of B.Ed. 2006-07 cannot be faulted with. No interference by this Court is called merely because in pursuance of the interim orders of this Court the students so admitted have been permitted to appear in the B.Ed. examination and it cannot be said that the admission of such students which were void initially stood validated for the aforesaid reason.

22. The second issue involved in these bunch of writ petitions is that whether the State action in taking two different stands in respect of two sets of similarly placed students admitted to B.Ed. examinations directly by the colleges affiliated to the Rohilkhand University and by those affiliated to Agra, Meerut and Bundelkhand Universities is discriminatory and contravenes the fundamental right to equality guaranteed under Article 14 of the Constitution of India.

23. In order to decide the aforesaid issue it is first to be examined that whether the students admitted by the petitioners to B.Ed. 2006-07 and those admitted by the colleges affiliated to the Agra, Meerut and Bundelkhand Universities are similarly placed. It is not disputed that both set of students were admitted to B.Ed. course by the concerned colleges directly on the basis of separate entrance test. The similarity however ends here. The admissions made by the colleges affiliated to Agra, Meerut and Bundelkhand Universities were recognised by the Universities to which they are affiliated and it was only after the concerned Universities had resolved to permit the students admitted directly to the B.Ed. course by the colleges affiliated to them that the State Government took the stand before the Apex Court that the Agra, Meerut and Bundelkhand Universities were going to hold examination for the students admitted to B.Ed. 2005-06 of Purvanchal University and B.Ed. 2006-07 of Agra and Meerut universities. In the instant bunch of writ petitions there is nothing on record which may indicate that any resolution has been passed by the Rohilkhand University agreeing to permit the students admitted by the petitioners to appear in the B.Ed. examinations and to declare their results.

24. On the other hand Sri Vivek Verma learned Counsel for Rohilkhand University has submitted that there is no question of the University recognising the absolutely illegal admissions made by the petitioners. Hence, it cannot be said that the State action is either discriminatory or contravenes the fundamental right to equality guaranteed under Article 14 of the Constitution of India.

25. The Division Bench decision of this Court in the case of Bansidhar Mahavidyalaya (supra) relied upon by the petitioners, in my opinion is of no help to the petitioners as this Court is bound by the Full Bench decision of this Court in case of Tuples Educational Society and Anr. (supra) which squarely covers the controversy involved in these writ petitions.

26. The writ petitions, therefore, have no merit and are accordingly dismissed.

The dismissal of these writ petitions will not prevent the State Government and the Rohilkhand University from considering the case of the students admitted by the petitioners to the B.Ed. 2006-07 sympathetically as has been done by Agra, Bundelkhand and Meerut Universities.