

(2002) 08 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : LPA (OW) No. 72 of 2002

Tawi Educational Trust

APPELLANT

Vs

University of Jammu

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2004) 3 SCT 118

Hon'ble Judges : V.K.Jhanji, J and B.L.Bhat, J

Bench : Division Bench

Advocate : D.S. Chauhan, J.P. Singh, Vishal Goel, P. Kohli, Advocates appearing for the Parties

Judgement

V.K. Jhanji, J.—This Letters Patent Appeal is directed against the judgment dated 8.2.2002 passed by the learned Single Judge dismissing

the writ petition filed by the appellant Trust (hereinafter referred to as the 'Institute'). In the writ petition, the following reliefs were claimed by the

appellant Institute :

(a) Issue of writ of certiorari quashing statute 6(c)(v) and condition 4 (eligibility) of the information brochure for the Session 200102 to the extent

it prescribed 50% marks in the common entrance examination for summoning a candidate for interview/group discussion, letter dated 8.9.2001

reducing the intake capacity of the petitioner Institute from 60 to 45 seats and letter dated 5.12.2002 cancelling/recalling Roll number slips of 10

candidates named therein;

(b) Writ of mandamus commanding the respondents to allow the students named in the communication dated 5.1.2002 and admitted to the

petitioner institution to appear in the examination of Ist Semester scheduled to

be held from 14.1.2002.

(c) Further writ of mandamus commanding the respondents to restore the intake capacity of the petitioner institution to 60 and to render the

accounts of funds and moneys collected by the respondents in last two years in accordance with Regulation 12(C);

(d) Writ of prohibition restraining the respondents from implementing the impugned statutes, letters and communications to the disadvantage of the petitioner and the students admitted therein.

2. In brief the facts are that the institute known as ""Institute of Management Sciences"" situate at Gangyal, Jammu is being run by the appellant for

imparting education in Master's Degree Programme in Business Administration (M.B.A.) stream. The Institute is recognised by All India Council

for Technical Education (AICTE) and is affiliated with the Jammu University.

3. For the Session 19992000 the Jammu University allocated 150 seats for the course. 30 seats were allocated to the Department of Management

Studies, University of Jammu and 60 seats each to the Institute and Pridarshani Institute of Management and Science, Trikuta Nagar, Jammu.

Subsequently 60 seats allocated to the Institute were reduced to 45 seats i.e. 22 free seats, 18 payment seats and 5 seats meant for NRI quota.

4. Notification for admission to the course was published on 24.6.2001. For regulating the admissions apart from others two candidates were

(i) that no candidate shall be called for interview and group discussion unless he/she has passed the written Entrance Test with not less than 50%

marks (40% for SC/ST candidates),

(ii) that the candidates equivalent to two times the number of seats will be called for interview and group discussion.

After written examination the Competent Authority found that if the first condition is applied then only 30 students would come within the zone of

consideration. In order to bring number of candidates equivalent to two times the number of seats the Competent Authority asked the Vice

Chancellor to relax the percentage. The Vice Chancellor accepted the recommendation of the competent authority and lowered down the

percentage. The total number of seats being 150, a cut of list of 300 candidates was prepared but on finding that candidates at S. No. 301 to 305

had also secured as many marks in the Entrance Examination as the candidate at

S. No. 300, a list of 305 candidates was published. As noticed earlier 60 seats each which were earlier allotted to the two institutions were reduced to 45 seats each and in this manner the total number of seats for the course including the one allotted to the Department of Management Studies, University of Jammu came down to 120, a cut list should have been 240 but because the decision to reduce the seats was taken subsequent to calling 305 candidates, all the 305 candidates were called for interview and group candidates. After the interview and group discussion a merit list was prepared and as per the merit list a list of 22 candidates against free seats was sent to the Institute on 10.9.2001. Out of 22 candidates only two candidates joined and so on 11.9.2001 a waiting list of 22 candidates was sent. All the 22 free seats came to be filled out of the lists sent on 10.9.2001. With the filling of 22 seats, a list of 18 candidates and a waiting list of 33 candidates against payment seats were sent to the Institute. Out of two lists of 51 candidates only 13 seats could be filled and five payment seats remained vacant. Five seats meant for NRI quota were filled by the Institute. Regarding admission of NRI candidates, some dispute took place between the Institute and the competent authority, but since that dispute has been settled, there is no need to deal with that matter.

5. The dispute in this case is only with regard to five payment seats, which remained vacant out of the seats allotted to the Institute. By letter dated 19.9.2001 the Institute asked the Member Secretary, Competent Authority to send the next select/waiting list so as to enable the institute to fill up the remaining five seats. However, before any response could be received from the Member Secretary, the Institute in anticipation of the permission to be granted by the competent authority, admitted five candidates, namely Vikrant Gupta, Nitin Kohli, Akshaya Sharma, Rohit Kotwal and Shipra Gupta. Except Akshaya Sharma, all others had appeared in the entrance examination and were on the list of 305 candidates, which the competent authority had drawn for calling the candidates for group discussion and interview. Institute after filling 45 seats allotted to it sent registration forms in triplicate of 45 students admitted by it for the first semester for MBA programme to the Asstt. Registrar (R) on 22.10.2001.

The Member Secretary, Competent Authority by his letter dated 30.10.201

refused to send the names of five candidates by saying that the competent authority in its meeting held on 8.9.2001 has taken a decision that no candidate securing below 40% marks in the entrance test, group

discussion and interview would be given admission to the course and no candidate securing at least 40% marks has been left for admission.

6. Five candidates who were admitted without their names having been sent by the competent authority continued to study in the Institute. The

University issued Roll numbers to all the 45 students for examination which was to be held on 14.1.2002, but before the said five students could

take examination, their roll numbers were withdrawn and in this regard letter dated 5.1.2002 was sent to the Institute. Institute being aggrieved of

the decision of the University challenged letter dated 5.1.2002 in writ petition. The learned Single Judge on perusal of the record and hearing the

learned counsel for the parties dismissed the writ petition. This is how, the Institute has preferred this Letters Patent Appeal.

7. Mr. Kohli, Senior Advocate appearing on behalf of the Institute contended that admission notice was followed by information brochure,

prescribing eligibility criterion and other procedure for making selection/admission for the course. He submitted that the criterion given in the

information brochure was in accordance with the statutes and regulations governing the common entrance test examination. He submitted that the

criterion given in the information brochure was in accordance with the statutes and regulations governing the common entrance test examination. He

submitted that according to which the competent authority was to call for interview and group discussion, the candidates two times the number of

seats available for the MBA course and no candidate was to be called for interview and group discussion, unless one had passed the writ entrance

test with not less than 50% marks (40% for SC/ST candidates). However, the Vice Chancellor on the recommendation of the competent authority

was empowered at any point of time to lower down this percentage to bring up the number of candidates twotimes the number of seats, if the

situation so warranted. Learned counsel contended that only 30 candidates could secure more than 50% marks in the written examination and so

the competent authority in order to bring the candidates two times the number of seats, a list of 300 candidates was drawn. After group discussion

and interview, two lists were sent for filling up free seats which accordingly were filled and out of 18 seats allotted against payment category seats

only 13 could be filled and so the Management of the Institute was well within its right to fill five vacant payment seats. He submitted that the

decision of the competent authority to recommend the names of only those candidates, who had secured not less than 40% marks was against

statute 6(C)(V), regulations and also the conditions laid down in the information brochure. He further submitted that on the facts of this case the

learned Single Judge has wrongly applied the judgment of the Supreme Court of India in Unni Krishnan, J.P. and others v. State of Andhra

Pradesh and others, 1993(2) SCT 511 (SC) : 1993(1) SCC 645. Mr. Kohli also submitted that the action of the Institute in admitting five students

against payment seats which had remained vacant was not against the provisions of law, and therefore the action of the University in withdrawing

their roll numbers and cancelling the admission was totally wrong.

8. In answer to these submissions Mr. J.P. Singh, learned counsel for the University and the Competent Authority submitted that from the reading

of statute, regulations and the judgment of the Supreme Court of India in Unni Krishnan's case it is clear that no candidate was to be admitted

unless and until permission in this regard had been granted by the competent authority. He submitted that the competent authority was well within

its right to take a decision on 8.9.2001 for giving admission only to those candidates who secured 40 marks in written entrance test, group

discussion and interview and no objection in this regard can be raised by the Institute. Mr. J.P. Singh further submitted that the learned Single

Judge has not committed any error either in law or on facts in dismissing the writ petition.

9. We have heard the learned counsel for the parties at length and have carefully gone through the record of this case.

10. In order to appreciate the respective contentions of the learned counsel for the parties, it would be apt to take notice of statute 6(c)(v), which

reads as under :

6(c)(v) :

For admission to MBA course, a candidate to be eligible must have passed the qualifying Bachelor's Degree examination in any discipline from the

University of Jammu or from any other recognized University with at least 50% of the aggregate number of marks (40% for SC/ST candidates).

Candidates who have qualified the final examination of the Institute of Chartered Accountants, Cost and Works Accountants/Company

Secretaries/Engineers (i.e. AMIE) shall also be eligible for admission provided that they have secured 50% of the aggregate number of marks in

the respective examination. Selection for admission to the course shall be made through a common entrance test, interview and group discussion,

to be conducted by the competent authority appointed by the Vice Chancellor and in accordance with the procedure as laid down in the

regulations governing Common Entrance Test for admission to MBA course. The Competent Authority shall call for interview and group

discussion, the candidates two times the number of seats available in the Department of Management Studies and affiliated private

colleges/institutes, provided that no candidate shall be called for interview and group discussion unless he/she has passed the written entrance test

with not less than 50% marks (40% for SC/ST candidates). However, the Vice Chancellor on the recommendation of the competent authority

may, at any point of time, lower this percentage to bring up the number of candidates equivalent to two times the number of seats if the situation so

warrants.

11. In order to regulate admission to MBA Course in the Department of Management Studies, and Private Institutes affiliated with the University

of Jammu the relevant clauses of the Regulation read as under :

7. The Competent Authority shall prepare an Applicationcum Information Brochure for the students desirous seeking admission to MBA course.

8. The candidates shall be allotted to the Department of Management Studies and other affiliated institutions on the basis of meritcumoption. After

making allotments, the Competent Authority shall also prepare and publish a waiting list of the candidates along with total marks obtained by them

in the Entrance Test, Group Discussion and interview taken together. The said list shall be followed strictly in the order of meritcumoption. No

Institute shall admit any student other than those allotted to it by the Competent Authority. Admission under payment seats shall also be made on

the basis of meritcumoption except against NRI/NRI Sponsored/Industry

Sponsored Management seats, if any, other conditions remaining the same.

9. In the process of admission to the MBA Course, if any seat or seats remain vacant after the waiting list supplied by the Competent Authority is exhausted, the Department of Management Studies and the affiliated private colleges/institutes shall in no case fill up any such seat without the prior approval of the Competent Authority.

12. The relevant portion of the Information Brochure cum Application Form is reproduced as under:

4. ELIGIBILITY

For admission to MBA Course, a candidate to be eligible must have passed the qualifying Bachelor's Degree examination in any discipline from the University of Jammu or from any other recognized University with at least 50% of the aggregate number of marks (40% for Schedule Caste/Tribe candidates).

Candidates who have qualified the final examination of the Institute of Chartered Accountants, Cost and Work Accountants/Company

Secretaries/Engineers (i.e. AMIE) shall also be eligible for admission PROVIDED that they have secured 50% marks of the aggregate number of marks in the respective examination.

Selection for admission to the Course shall be made through a Common Entrance Test, Interview and Group Discussion to be conducted by the

Competent Authority appointed by the Vice Chancellor and in accordance with the procedure as laid down in the Regulations governing Common

Entrance Test for admission to MBA course.

The Competent Authority shall call for interview and Group Discussion, the candidates two times the number of seats available in the Department

of Management Studies and affiliated Private Colleges/Institutes provided that no candidate shall be called for interview and Group Discussion

unless she/she has passed the written Entrance Test with not less than 50% marks (40% for SC/ST candidates).

However, the Vice Chancellor, on the recommendation of the Competent Authority, may, at any point of time, lower this percentage to bring up

the number of candidates equivalent to two times the number of seats if the

situation so warrants.

From the conjoint reading of the statute, regulation and the relevant condition quoted above, it is clear that only those candidates who had passed

the qualifying Bachelor's Degree Examination in any discipline from the University of Jammu or from any other recognized University with at least

50% marks of the aggregate number of marks (40% for Schedule Caste/Tribe candidates) were eligible for admission to MBA Course. The

selection to the course was to be made through Common Entrance Test. After the written examination, the competent authority was to call for

interview and group discussion, the candidates two times the number of seats available and no candidate was to be called for interview and group

discussion unless he/she had passed the written Entrance Test with not less than 50% marks (40% for SC/ST candidates). However, the Vice

Chancellor on the recommendation of the Competent Authority was empowered to lower this percentage to bring up the number of candidates

equivalent to two times the number of seats. After the interview and group discussion, the competent authority was required to prepare

meritcumoption list strictly in accordance with merit. Thereafter the candidates were to be allotted to the Department of Management Studies and

other affiliated private institutions/colleges, in accordance with the seats allotted to them. After making allotment, the Competent Authority was to

prepare and publish a waitlist of the candidates along with total marks obtained by them in the Entrance Test, Group Discussion and interview

taken together. Such list was to be followed for filling up the causal vacancies or drop out vacancies strictly in the order of meritcumoption. No

institution was to admit any student other than those allotted to it by the Competent Authority. Regulation clearly provided that the admission under

payment seats shall be made on the basis of meritcumoption except against NRI/ NRI sponsored/Industry Sponsored Management seats. Statute

6(c)(v), regulations 7, 8, 9 and the eligibility condition laid down in the information brochure did not provide that after interview and group

discussion the meritcumoption list will be prepared by the Competent Authority of only those candidates who would obtain 40 marks in the

Entrance Test, Group Discussion and Interview. The only condition was that after the written Entrance Examination the Competent Authority

would call for interview and group discussion the candidates two times the number of seats available for the Course and no candidate would be

called for group discussion and interview unless he/she had passed the written Entrance Test with not less than 50% marks (40% for SC/ST

candidates). After the interview and group discussion, meritcumoption list was to be prepared and published strictly on the basis of the marks

obtained by them in the entrance test, interview and group discussion and the admission was to be offered to them in two private institutes and

Department of Management Studies, University of Jammu strictly in the order of meritcum option.

13. Record produced before us shows that on 11.8.2001 a list of 305 candidates was published and they were asked to appear for interview and

group discussion along with original testimonials/certificates on the dates mentioned against their roll numbers, failing which the candidature for

admission was not to be considered. Record further reveals that the Competent Authority took two decisions at its meeting on 8.9.2001, first

reducing number of seats in the MBA Course allotted to the private institutions. 60 seats allotted to the Institute were reduced to 45 (22 free seats,

18 payment seats, and 5 seats meant for NRI candidates). Second decision taken was that no candidate securing less than 40% marks in entrance

test, group discussion and interview shall be admitted to the course. The decision taken on 8.9.2001 was not made known to either the candidates

who had been called for interview and group discussion or to the Institute. In fact the last date for concluding interview and group discussion was

30.8.2001, meaning thereby that the process of Group Discussion and interview was over by 30.8.2001 and the decision that no candidate

securing less than 40% marks in the entrance test, group discussion and interview will be admitted to MBA course was taken only after the entire

process of admission was over. The decision taken on 8.9.2001 in our opinion was not only against the principles of natural justice as it was not

conveyed to the persons who were going to be affected, but was also against the statute 6(c)(v), regulation 8 and eligibility condition contained in

the information brochure. It may also be observed at this stage that as per the original conditions after the written examination candidates securing

50% marks (40% for SC/ST Candidates) or above, were to be called for in the interview and group discussion, but in order to bring up the

number of candidates equivalent to twotimes the number of seats, the Vice Chancellor on the recommendation of the Competent Authority

lowered down the percentage, which was even below 40%. This being the position, the competent authority was not justified in taking a decision

contrary to the one taken earlier by the Vice Chancellor on the recommendation of the Competent Authority and that too after the process of

selection was over. In this view of the matter, we do find merit in the submission of the learned counsel for the Institute that the Competent

Authority was bound to recommend the names of the candidates from the list of 305 candidates in order of meritcumoption. However, we at the

same time find merit in the submission of the learned counsel for the respondents that the action of the institute to admit five students against five

vacant payment seats was wrong. Regulation 8 governing the Common Entrance Test for MBA Course clearly provided that no institution shall

admit any student other than those allotted to it by the Competent Authority. Regulation 9 also provided that if any seat or seats remain vacant after

the waiting list supplied by the Competent Authority is exhausted, the Department of Management Studies and the affiliated private

colleges/Institutes shall in no case fill up any such seat without the prior approval of the Competent Authority. Their Lordships of the Supreme

Court in Unni Krishnan's case (supra) while evolving the scheme in the nature of guide lines, which the appropriate Government recognising

affiliating authorities were to impose and implement for grant of permission, grant of recognition or grant of affiliation, as the case may be, clearly

laid down in para 210(8) that ""the payment candidates shall be allotted to different professional colleges on the basis of meritcumchoice. The

allotment shall be made by the Competent Authority. A professional college shall be bound to admit the students so allotted. The causal vacancies

or unfilled vacancies, if any, shall also be filled in the same manner. The management of a professional college shall not be permitted to admit any

student other than the one allotted by the Competent Authority whether against free seat or payment seat, as the case may be.

In view of the regulations governing the admission to the course and the law settled by the Supreme Court of India in Unni Krishnan's case (supra)

the Institute was not justified in admitting five students against payment seats without obtaining permission from the Competent Authority.

14. The next question which arises for consideration is as to what order should be passed with regard to five students, who were admitted without permission of the Competent Authority. The said students are not party to the writ petition. However, Mr. D.S. Chouhan has put in appearance on their behalf. Students and their parents are also present in the Court. Mr. Chouhan submitted that his clients were not informed that their names have not been recommended by the Competent Authority. He submitted that his clients were always under the impression that their admission is valid. He submitted that on the basis of the court order, all the five students have not only appeared in the Ist Semester examination, but have also completed the course for the second semester and are only to appear in the examinations which presently are under going. Mr. Chouhan submitted that if at this stage their admission is cancelled, their entire career will be ruined. Considering that the only persons affected by the decision would be five students, we allowed Mr. Chouhan to intervene in the matter. We have also heard him at length.

15. Mr. Kohli, learned counsel appearing on behalf of the Institute further submitted that the admission given to five students was in accordance with the judgment of the Supreme Court in Unni Krishnan's case (supra) and was also not against Regulation 8. Rather it was in accordance with the regulation governing the admission to MBA course. In support of this submission Mr. Kohli referred to subpara (9) of para 210 of the judgment of Unni Krishnan's case, where their Lordships of the Supreme Court opined as under :

After making the allotments, the Competent Authority shall also prepare and publish a waiting list of the candidates along with the marks obtained by them in the relevant test/examination. The said list shall be followed for filling up any casual vacancies or 'drop out' vacancies arising after the admissions are finalised. These vacancies shall be filled upto such date as may be prescribed by the Competent Authority. Any vacancies still remaining after such date can be filled by the management.

16. Relevant part of the regulation 8 referred to by Mr. Kohli provided that "the candidates shall be allotted to the Department of Management Studies and other affiliated Institutions on the basis of meritcumoption. After making allotments, the Competent Authority shall also prepare and

publish a waiting list of the candidates along with total marks obtained by them in the Entrance Test, Group Discussion and interview taken

together. The said list shall be followed for filling up any casual vacancies or drop out vacancies strictly in the order of meritcumoption.

17. Mr. Kohli, Senior Advocate, learned Counsel submitted that on reading of subpara (9) of para 210 and para 8 of the Regulation, the Institute

was not wrong in forming an impression that the Competent Authority would prepare and publish a waiting list of all the 305 candidates along with

the total marks obtained and interview taken together strictly in order of meritcumoption and the management would be at liberty to admit the

students from the said list in that order. He submitted that the admission to Akshya Sharma, who had not appeared in the Common Entrance Test

too was not wrong as Their Lordships of the Supreme Court in Unni Krishnan's case (supra) in subpara (9) of para 210 observed that the private

institutions would be allowed to fill up the unfilled seats of its own. Learned Counsel further submitted that in case this Court comes to the

conclusion that the admission given to Akshay Sharma was wrong then the regulation to the extent it barred the institute to fill up the unfilled seats

of its own is to be struck down being contrary to the decision of the Supreme Court given in Unni Krishnan's case (supra). We, however, find no

merit in the submission of the learned counsel. On combined reading of paras 206 to 211 in Unni Krishnan's case, we are left in no doubt that the

Competent Authority/University has been empowered to lay down the eligibility criterion and conditions for giving admission against free seats and

payment seats and the professional colleges are bound to admit only those candidates whose names are recommended by the Competent

Authority. The Management of the professional colleges are not permitted of its own to admit any student whether against free seats or payment

seats as the case may be. We, therefore, do not find that regulation 8 or 9 framed by the University for regulating the admission is against the

scheme evolved by the Hon'ble Supreme Court of India.

18. In view of the above, we are of the opinion that admission given to four students, namely Vikrant Gupta, Nitin Kohli, Rohit Kotwal and Shipra

Gupta was not liable to be cancelled. So far as Akshay Sharma is concerned, admittedly he had not appeared for Common Entrance Examination

nor was called for interview and group discussion, meaning thereby that it was clearly known to him that his admission to the course is not valid.

His admission, thus cannot be sustained. Institute too was not justified in giving admission to Akshay Sharma and thus, in such like circumstances,

we are of the view that the institute is liable to refund the fee which it had received from Akshay Sharma. We however, do not find any merit in the

submission of Mr. Chouhan that Akshay Sharma is also entitled to compensation and interest on the amount.

Accordingly, we partly allow the appeal. The judgment of the learned Single Judge is set aside to the extent it has upheld letter dated 5.1.2002 of

the University vide which it withdrew the roll numbers of four students, namely Vikrant Gupta, Nitin Kohli, Rohit Kotwal and Shipra Gupta. The

letter to that extent is quashed.

19. We further direct that the Institute shall refund the fee which it had received from Akshay Sharma within two months from the date certified

copy of the order is made available to it failing which Akshya Sharma shall be entitled to interest at the rate of 9% per annum from the expiry of

two months till the payment is made. The Institute too cannot escape its liability in admitting five students against the payment seats, without

obtaining any permission from the Competent Authority and its action being against the statute, regulations governing the admission and the

conditions laid down in the information brochure governing the admission to the MBA Course is also liable to pay costs. The costs are assessed at

Rs. 50,000/ (Rupees fifty thousands). Accordingly it shall pay cost of Rs. 50,000/ to be deposited in the Advocates' Welfare Fund within three

months, failing which it shall pay interest at the rate of 9% per annum from the expiry of three months till the payment is made. Registry is directed

to bring to the notice of the Registrar (Judicial) and the President of the Bar Association, High Court this part of the order so as to enable them to

seek execution of the order in case the costs are not deposited within the time given.