

(2009) 05 UK CK 0031
In the Uttarakhand High Court
Case No : Special Appeal No. 89 of 2009

Varun Singh Rajput	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 21, 45, 51, 52, 52(3)

Citation : (2009) 3 UC 1393

Hon'ble Judges : Vinod Kumar Gupta, C.J.; V.K. Bist, J

Bench : Division Bench

Advocate : Shobhit Saharia, for the Appellant; L.P. Naithani, General and Vinod Nautiyal, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—By this common Judgment, both the Appeals are being disposed of together.

2. These Special Appeals are directed against Orders dated 23rd April, 2009 passed by the Learned Single Judge of this Court in Writ Petitions Nos. 579 of 2009 (M/S) & 586 of 2009 (M/S), whereby, in the pending Writ Petitions, the Learned Single Judge has declined to grant any interim relief to the Appellants.

3. The Appellants are students pursuing the Course of Masters Degree in Human Resource Development (MHRD) in the Institute of Media, Management and Technology, Dehradun. They appeared in the 1st Semester and the 2nd Semester Examinations of this Course, result whereof has not been declared so far. When they were to appear in the 3rd Semester Examination, they were prevented from doing so by Respondent No. 3 University on the ground that they were not eligible for admission in the aforesaid Course because in the qualifying examination, they had not secured 50% marks in aggregate. The Learned Single Judge, specifically relying upon the statement made by Mr. Vinod Nautiyal, Learned Addl. Advocate General appearing for the University to the effect that

the aforesaid eligibility criterion was contained in the Ordinance issued by the Executive Council, declined to grant any interim relief to the Appellants /writ Petitioners who, aggrieved, have filed the present Special Appeals.

4. Section 45 of the Uttar Pradesh State Universities Act, 1973 ("1973 Act" for short) relates to the subject matter of admission of students. Sub-section (1) of this Section prescribes the eligibility criterion. For ready reference, Sub-section (1) is reproduced hereunder which reads thus:

45. Admission of Students. - (1) 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 recognized 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.

5. As is evident, Clause (b) (supra) lays down that a student, for being eligible for admission, also should possess such further qualification, if any, as may be specified in the Ordinances. It is the undisputed case of the parties before us that the stipulation that a student must have obtained 50% or more aggregate marks in the qualifying examination is relatable to Clause (b) and that such stipulation has to be contained in the Ordinances to be issued by the University. It is the undisputed case of the parties before us that if the Ordinance does not contain such eligibility criterion of 50% marks, no student can be denied admission on the ground that he did not possess 50% or more aggregate marks in the qualifying examination.

6. Now, what has to be examined is whether an Ordinance has been issued by the University prescribing the aforesaid eligibility criterion. Section 21 of the aforesaid 1973 Act relates to the powers and duties of the Executive Council. The relevant extract of Section 21 reads thus:

21. Powers and duties of Executive Council. - (1) The Executive Council shall be the principal executive body of the University and subject to the provisions of this Act, have the following powers, namely -

...

(iii) to make, amend or repeal Statutes and Ordinances;

...

7. Section 51 of 1973 Act relates to the subject of Ordinances. Its relevant extract reads thus:

51. Ordinances. - (1) Subject to the provisions of this Act and the Statutes the Ordinances may provide for any matter which by this Act or the Statutes is to be or may be provided for by the Ordinances.

(2) Without prejudice to the generality of the provisions of Sub-section (1), the Ordinance shall provide for the following matters, namely -

...

(c) the conditions under which students shall be admitted to the examinations, degrees and diplomas of the University and shall be eligible for the award of such degrees and diplomas;

...

8. Section 52, again dealing with the subject of Ordinance, lays down the manner under which the Ordinances can be issued. Sub-section (3) of this Section clearly lays down that the Executive Council may, from time to time, make new or additional Ordinances or amend or repeal the Ordinances. For ready reference, Sub-section (3) of Section 52 is reproduced hereunder which reads thus:

(3) Save as otherwise provided in this section, the Executive Council may, from time to time, make new or additional Ordinances or may amend or repeal the Ordinances referred to in Sub-sections (1) and (2):

Provided that no Ordinance shall be made -

(a) affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or the further qualifications mentioned in Sub-section (1) of Section 45 for admission to the degree courses of the University, unless a draft of the same has been proposed by the Academic Council; or

(b) effecting the conditions and mode of appointment and duties of examiners and the conduct or standard of examinations or any course of study except in accordance with a proposal of the Faculty or Faculties concerned and unless a draft of such Ordinance has been proposed by the Academic Council; or

(c) effecting the number, qualifications and emoluments of teachers of the University or the income or expenditure of the University, unless a draft of the same has been approved by the State Government.

9. A combined reading of the aforesaid provisions of 1973 Act clearly suggests that, first and foremost, stipulation regarding the eligibility criterion of 50% marks can legitimately and legally be enforced only if it is contained in an Ordinance and, secondly, Executive Council of the University is the only body which can issue an Ordinance containing such a stipulation.

10. Vide an order passed by this Court on 24th April, 2009 in the present Special Appeals, we had afforded an opportunity to the Respondent University to file a reply to the Stay Applications, through which the University could inform us, with reference to the contents of the affidavit as well as the documents, whether the Executive Council has issued any Ordinance to the aforesaid effect or not. Even though one Sri Virendra Prasad Hatwal, Assistant Registrar of Respondent No. 3 University has filed his counter affidavit in compliance with the aforesaid direction, a perusal of the counter affidavit as well as all the annexures appended thereto clearly reveal to us that the Executive Council of the University has not issued any Ordinance containing the aforesaid stipulation. The only Ordinance, which has been referred to and relied upon by Respondent No, 3 University, is Annexure CA-5 to the aforesaid counter affidavit. Even though it does contain a stipulation about the aforesaid eligibility criterion of 50% marks, on the very face of it, it itself reveals that it: has been approved by the Board of Studies on 21st June, 2007; Faculty Board on 9th July, 2007; and Academic Council on 20th July, 2007. On the face of it, this document clearly tells us that it has not been approved or issued by the Executive Council of Respondent No. 3 University. We, at the risk of reiteration, must observe that the only Authority or Body of the University which is empowered to issue or make an Ordinance is the Executive Council. Annexure CA-5 is an instrument which has not been issued by the Executive Council. It, therefore, in the eyes of law cannot be termed or treated as a valid or legal Ordinance and, therefore, is not enforceable.

11. What, therefore, clearly emerges is that the eligibility criterion regarding 50% aggregate marks, not having been stipulated through a legally and validly issued Ordinance, cannot be enforced against the Appellants. The Learned Single Judge, therefore, was not right, in the facts and circumstances of these cases, in declining the interim relief to the Appellants / writ Petitioners.

12. The Special Appeals accordingly are allowed. The impugned Orders dated 23rd April, 2009 of the Learned Single Judge are set aside. Respondent No. 3 University is directed to declare the result of the 1st Semester, 2nd Semester as well as 3rd Semester Examinations of the Appellants /writ Petitioners. (On 24.04.2009, this Court had granted the interim relief to the Appellants / writ Petitioners of provisionally taking 3rd Semester Examination.) All the necessary consequences shall also follow.