
(2005) 09 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48630 of 2005

Welfare Association of Self-Financed Institutes

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Constitution of India, 1950 — Article 19(6), 39(1)

Citation : (2005) 6 AWC 6199 : (2005) 1 UPLBEC 27

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : A.K. Goyal, for the Appellant; Adish Kumar Agrawal, Addl. A.G., V.B. Upadhyaya and Neeraj Tiwari, Virendra Singh, Addl.C.S.C. and S.C., for the Respondent

Judgement

Arun Tandon, J.—Heard Sri A.K. Goyal Advocate on behalf of the petitioner, Sri Adish Kumar Agrawala Additional Advocate General assisted by Additional Chief Standing Counsel on behalf of respondent nos. 1, 2 and 4, Sri V.B. Upadhyaya Senior Advocate, assisted by Sri Neeraj Tiwari, on behalf of respondent No. 3.

2. Petitioner No. 1 and 2 are societies registered under the Societies Registration Act, 1860. The members of the said society are self financed private institutions of higher education, situate within the State of U.P. Petitioner nos. 3 and 4 are institutions imparting education in professional courses of B. Tech., B. Pharm., B. Arch., B.H.M.C.T., M.B.A. M.C.A. etc . Both the institutions are member of petitioner No. 1 and 2 society.

3. This writ petition was filed initially for quashing the notification dated 25th April, 2005 issued by the Secretary, U.P, Government, addressed to the Vice Chancellor of all the Universities, stating therein that for the academic year 2005-06, the management quota seats in respect of engineering and other professional self financed courses would be 15%, while remaining 85% seats termed as State seats would be filled on the basis of the entrance examination conducted by the Universities or such other body appointed for the purpose. As

also for a direction upon the respondents not to recommend any candidate to the petitioner institutions on the basis of the entrance examination conducted by the U.P. Technical University commonly known as SEE-UPTU-2005, who has secured less than 60% marks in the said entrance examination. Lastly it is prayed that seats, which remain unfilled after prayer No. 2 being granted, may be permitted to be filled as management quota seats by the institutions on the basis of any of the recognized mode of judging the merit of the candidates.

4. During pendency of the said writ petition, the Committee, constituted under the judgment and order of the Hon''ble Supreme Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, headed by retired Justice H.N. Tilheri in its meeting dated 16th July, 2005 rejected the application made on behalf of the Welfare Association of Self Financed institutions for increase of management quota and directed that the same would continue to 15% only. The said decision of the Committee has been challenged by means of the amendment application, which has since been allowed by this Court.

5. At the time the arguments were heard in the present writ petition, serious contentions were raised with regards to fixation of 15% management quota seats in respect of professional self financed unaided institutions. Counsel for the parties placed reliance upon the various paragraphs of the judgments of Hon''ble Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , Islamic Academy of Education and Another Vs. State of Karnataka and Others, as well as Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, as well as upon the interim order of the Hon''ble Supreme Court dated 1st August, 2005 passed in SLP No. 14742 of 2005. State of U.P. v. M.S.P.G. College and Ors.

6. However, it is not necessary for this court to enter into the merits of the contention so raised on behalf of the parties in respect of fixation of management quota qua self financed institution inasmuch as the controversy in that regard has been laid down to rest in the latest Constitution Bench judgment of Hon''ble 7 Judges of the Hon''ble Supreme Court in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, . The Hon''ble Supreme Court of India, while answering question No. 1, has held as follows:

"As per bur understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right

and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 39(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

The observations in paragraph 68 of the majority opinion in *Pai Foundation*, on which the learned counsel for the parties have been much at variance in their submissions, according to under Section, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in *Pai Foundation*, if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in *Pai Foundation*) in our considered opinion, observations in paragraph 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give free-ships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the state to cater to the educational needs of weaker and poorer sections of the society.

Nowhere in *Pai Foundation*, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

We make it clear that the observation in *Pai Foundation* in paragraph 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.

In *Pai Foundation*, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy to the extent it allows States to fix quota for seat sharing between management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy, in our considered opinion, does not lay down the correct law and runs counter to *Pai foundation*."

7. However, the Hon"ble Supreme Court in the concluding part of the judgment has further clarified as follows:

"We are also conscious of the fact that admission process in several professional educational institutions has already commenced. Some admissions have been made or are in the process of being made in consonance with the schemes and procedures as approved by Committees and in some cases pursuant to interim directions made by this Court or by the High Courts. This judgment shall not have the effect of disturbing the admissions already made or with regard to which the process has already commenced. The law, as laid down in this judgment, shall be given effect to from the academic year commencing next after the pronouncement of this judgment."

8. In view of the aforesaid, this Court is not required any further deal with the contention raised on behalf of the parties with regards to fixation of management quota. The law declared by the Hon"ble Supreme Court is binding upon the petitioners as well as respondents equally. In view of the aforesaid, the decision taken by the State Government as well as by the Committee, which is subject matter of challenge, must give way to the law declared by the Hon"ble Supreme Court and this Court has no room to doubt that the authorities shall act in conformity thereto.

9. This leads us to question as to whether other prayer made by the petitioner in the present writ petition namely that the respondent State Authorities may be directed not to recommend any student for admission to the petitioner institutions on the basis of the entrance examination conducted by the U.P. Technical University, referred to above, for the academic session 2005-06, if such candidate has secured less than 60% marks in the entrance examination. The left over seats may be permitted to be filled by the management on its own according to one of the recognized modes of judging the merit of the individual candidates.

10. For the purposes of adjudicating upon the said prayer made in the present writ petition, the following facts would be relevant:

11. (A) after the State Government had determined the distribution of the total seats between the State and the management quota in respect of professional courses offered by self financing private institutions would be in the ratio of 85% and 15%. The process for the admission against the 85% State seats was initiated through State Entrance Examination to be conducted by the U.P. Technical University, Lucknow for admission to B. Tech., B. Pharma., B. Arch.,

B.H.M.C.T., M.B.A. M.C.A Courses, commonly know as SEE-UPTU: 2005 (hereinafter referred to as SEE-UPTU: 2005 Examination). In the brochure published for the aforesaid SEE-UPTU-2005, in paragraph 3 eligibility criteria for admission to the various courses was specifically mentioned and the minimum academic qualifications, required for being a candidate in the entrance examination, were specifically disclosed. Details of the entrance examination was provided for under Clause-4 of the brochure. Clause-5 disclose the schedule of the examination, Clause-6 related to Syllabus and Clause-7 pertain to the evaluation and declaration of result. It would be worthwhile to reproduce Clause-7 of the brochure, which read as follows:

"7. EVALUATION AND DECLARATION OF RESULT

7.1 The results of SEE-UPTU: 205 will be declared on or before 31st May, 2005.

7.2 The answer key of each papers will be displayed on website www.uptu.nic.in when the result of SEE is declared.

7.3 Separate merit lists on the basis of performance of candidates in SEE- UPTU:2005 will be prepared each for B. Tech. IB. Arch./B. HMCT/MBA/MCA/Diploma holders. Merit position and score card with total marks and marks obtained in each subject shall be available on Website www.uptu.nic.in.

7.4 In case two or more candidates secure equal marks, inter-se-merit of such candidates shall be determined as follows: B.Tech.: By the marks obtained in Paper 2 and then by age. B. Pharm: By marks obtained in Paper 1 and then by age.* B. Arch,: By marks obtained in Paper 6 and then by age. B. Tech.(Ag. Engg.): By marks obtained in Paper 5 or papcr2 and then by age.* B.H.M.C.T./MBA/MCA/Diploma Holders: by age only

7.5 The Central Admission Board (CAB) reserves risht to impose a certain cut-off percentage of marks (to be decided at the time of declaration of result) to decide about successful candidates in SEE depending upon the number of available seats. All successful candidates shall be called for counseling by giving intimation through newspaper and website www.uptu.nic.in and by post also but delay on part of Post Office will not be owned by this university. The successful candidates are advised to keep watch on website and news papers for counseling dates and they may download the counseling letter from website www.uptu.nic.in also."

12. All other clauses of the brochure, which give further details pertaining to the reservation, domicile requirements, weightage, admit card etc are not relevant for the purposes of this petition. From Clause-7 of the brochure it is apparently clear that absolutely no cut of marks were provided as the minimum standard required to be achieved by a candidate to be eligible for admission to respective course. At Bar also the counsel for the U.P. Technical University as well as Advocate General have fairly conceded that no cut of marks have been prescribed as a minimum requirement for being declared as successful in the SEE-UPTU:2005 Entrance Examination so as to become eligible for admission to the various courses covered by the said examination. Thus, it is-an admitted fact that the U.P. Technical University as well as State Authorities have not prescribed any minimum marks to be obtained by a candidate to be declared successful in

the in the SEE-UPTU:2005 Entrance Examination so as to be called for counseling for being admitted to the various courses covered by the said entrance examination.

(3) In the entrance examination so conducted by the U.P. Technical University approximately 89000 candidates appeared. All the candidates, irrespective of marks obtained by them in entrance examination, were awarded ranks and were called for counselling. It is worthwhile to reproduce the schedule published by the respondents for counseling in pursuance of the said entrance examination, which is being quoted herein below:

Date Rank holders called Percentage of marks for counseling obtained in State Entrance Examination i) 12.7.2005 1000-5000 80.78 to 76.78 ii) 13.7.2005 5000-10000 47.00 to 40.44 iii) 14.7.2005 10000-15000 37.44 to 32.33 iv) 15.7.2005 15000-20000 31.22 to 27.67 v) 16.7.2005 20000-30000 26.44 to 21.11 Vi) 17.7.2005 30000-40000 20.78 to 16.67 vii) 18.7.2005 40000-50000 15.78 to 15.00 viii) 19.7.2005 50000-60000 Less than 15-10% ix) 20.7.2005 60000-70000 10.44 to 9.00 x) 21.7.2005 70000-Onwards 7.89 to Less than zero i.e. minus marks (Since there is negative marking system in SEE)" 14. It is thus apparent that every candidate who had appeared in the entrance examination, irrespective of the marks obtained by him, was invited for counseling. It is stated in paragraph 28 of the rejoinder affidavit that candidates securing less than 33% marks and in particular cases candidates who had achieved minus marks in the entrance examination, (For example (i) roll No. 3931488, who had achieved -2 marks out of 300 in Math and -2 marks out of 600 in Physic and Chemistry, (ii) roll No. 3151227 who had achieved -11 marks out of 300 in Physic and Chemistry and -14 in Math and (iii) roll No. 3151264 who had achieved -12 marks in Physic and Chemistry) were all invited for counseling and in fact offered seats for admission in private self financing professional institutions against the State quota seats.

15. On such disturbing facts being brought on record, this Court vide order dated 26th July, 2005 required the U.P. Technical University to produce the relevant tabulation chart on the basis whereof the students were allotted to the petitioner institutions. In compliance of the order of this court, relevant records were produced on behalf of the respondent and from the records it is established that the averments made by the petitioner in his rejoinder affidavit were factually correct. At this stage Additional Advocate General handed over a chart to the Court categorically stating therein that despite the entrance examination having been held and counseling having been done in respect of practically every candidate, who had appeared in entrance examination, large number of seats are still lying vacant against the State quota seats. For ready reference, the chart handed over to the Court is being reproduced here under:

	Sr.No.	Stream	Name	Total	Seats	Candidates	Allotted	Fee
Balance Registered Deposited	1	B.Tech & Tech	(Ag.)	23609	20238	17501	16468	

6108 2 MCA 5654 2208 1840 1768 3814 3 MBA 7270 4071 3472 3384 3798 4 B. Pharma 2294 2310 1934 671 360 5 B.Arch. 255 187 144 142 111 6 B. HMCT 263 178 146 143 117 7 B. Tech (2year) 2444 1058 1058 918 1386 8 B. Pharma (2ycar) 165 61 61 55 104

16. In view of the aforesaid facts, as are on records of the present writ petition, counsel for the petitioner vehemently contended that the entire entrance examination conducted by the U.P. Technical University for admission to various courses, commonly known as SEE-UPTU:2005, is a farce inasmuch as (a) no valid and legal entrance examination can be held unless a cut of passing mark being are specifically notified in respect of the said examination, (b) no candidate, who has secured less than prescribed passing marks, is entitled to the counseling/ allotted against the State quota seats in private self financed professional institutions, (c) in any case the candidates, who have failed or who have secured minus marks in the entrance examination do not have any right to be counseled or to be allotted to the private self financed institution. The contention so raised on behalf of the petitioner could not be suitably countered by the counsel for the University or by the Additional Advocate General.

17. Parties to the litigation agree that there can be no entrance examination without fixing a minimum marks. In the present fact situation even if 33% is fixed as minimum passing marks in respect of the said entrance examination, the admission granted to the students in pursuance of the said entrance examination would be rendered illegal to a very large extent and the U.P. Technical University, Lucknow is not a position to hold any fresh entrance examination before three months for admission to professional courses against 85% State seats, which may become available on the admission being cancelled now.

18. Normally this Court would not have become party to such type of an entrance examination and to the admission being granted to students who have secured less than 33% marks in an entrance examination for professional courses.

19. However, counsel for U.P. Technical University has fairly conceded that all the students who have appeared in the entrance examination have achieved the prescribed minimum marks in the qualifying examination for being a candidate in the entrance examination and therefore, so far as the minimum academic qualification for a candidate to be admitted to the course is not in controversy. Therefore the counsel for the University submitted that no purpose would be served by up setting the process which has already been completed inasmuch any interference at this stage necessarily require the U.P. Technical University, Lucknow to conduct a fresh examination and even then it may not be possible to get required number of students with minimum qualifying marks to be made available for admission against the 85% State seats. Counsel for the University also brought to the knowledge of the Court that academic session of the students, who have been admitted in pursuance of the entrance examination,

has already commenced and any interference at this stage with the selection held by the U.P. Technical University on the strength of the entrance examination would necessarily jeopardize the academic career of those students. Such students concerned are not a party to the present writ proceeding.

20. In such circumstances, a concession has been made on behalf of the parties that it would be in the interest of justice that despite the Court having come to a conclusion that the counseling and allotment of students, who have secured less than 33% marks in the entrance examination, is legally not correct, yet this Court may not interfere at this stage with admission already granted, as academic session has commenced. The additional Advocate General as well as counsel for the U.P. Technical University stated that counseling in respect of the remaining seats under the State quota would result in allotment of candidate of lower merit than already allotted against the State quota seats to the self financed private institutions and in such circumstances this Court may permit the remaining seats as per the chart of the balance seats available (as handed over to the Court, reproduced herein above, by Additional Advocate General) to be filled by the private self financed institutions, from one of the recognized mode of judging the merit, on their own. This is, only an effort to balance the interest of the students who have been admitted against the State seats in private self financed institutions of the petitioners despite having secured less than 33% marks in the entrance examination conducted by the U.P. Technical University, Lucknow; in common men language failed in the entrance examination and the academic interest of the private institutions.

21. Having regard to the totality of the circumstances, this Court is of the opinion that no further counseling be permitted to be done by the respondents in respect of SEE-UPTU:2005 and balance seats, (as per the chart supplied by the Additional Advocate General) may now be permitted to be filled by the private self financed institutions as the left over seats, as part and partial of their management quota seats, on the basis of one of the recognized modes of judging the merits of the candidates. It is ordered accordingly.

22. This Court expresses its disapproval in no uncertain terms qua the process of selection and counseling made on the basis of the entrance examination held by the SEE-UPTU:2005 without fixing minimum pass marks for the said examination. Interference with the same has been avoided deliberately only in the background that entire academic career of students already admitted may be jeopardized and may cause loss of entire academic session to such students who are not before the Court, However, in future the respondents must determine and notify, at the time of publication of admission brochure itself, the minimum passing marks which a candidate must obtain in the entrance examination for being eligible for counseling/or being admitted to the various courses, covered by the said entrance examination.

23. Subject to the directions issued above, writ petition stands disposed of.