

Court No. - 7

Case :- WRIT - C No. - 1213 of 2023

Petitioner :- Mithilesh Kumar Chaudhary

Respondent :- State Of U.P. Thru. Addil. Chief Secy. Empowerment Of Persons With Disabilities, Lko. And Others

Counsel for Petitioner :- Krishna Lal Yadav, Aparna Sinha

Counsel for Respondent :- C.S.C., Atul Kumar Dwivedi

Hon'ble Alok Mathur, J.

1. Heard Shri Krishna Lal Yadav, learned counsel for the petitioner, learned Standing Counsel on behalf of respondent no.1 and Shri Sudeep Seth, learned Senior Advocate assisted by Shri Atul Kumar Dwivedi, learned counsel on behalf of respondent no.2 to 5.

2. By means of the present petition, the petitioner has challenged the order dated 06.10.2022 passed by the Departmental Research Committee of the Dr. Shakuntala Misra National Rehabilitation University, Lucknow by which the admission of the petitioner in the Ph.D. course of Sociology has been cancelled. He has also challenged the orders dated 13.12.2022 and 23.01.2023 passed by Research Degree Committee and by the Registrar, respectively, communicating the aforesaid order with regard to the cancellation of the admission in Ph.D.

3. It has been submitted by counsel for the petitioner that the petitioner is a law graduate having passed his LL.B. in the year 2014, B.Sc. in 2001 and M.Sc. in 2010 and thereafter had applied for pursuing Ph.D. (Sociology) from Dr. Shakuntala Misra National Rehabilitation University, Lucknow. He participated in the Ph.D. Entrance Test, 2016 where a provisional Admit Card was also issued, and according to the petitioner, he has passed Ph.D. Entrance Examination and was called for counseling on 23.08.2016, and subsequently, he was declared qualified. He completed all the formalities with regard to his admission in Ph.D. Sociology course. It

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is not in dispute that the petitioner is in 1st year Ph.D. Sociology course since 2016 and it is only in 2021 when the petitioner approached the Supervisor to submit the research related report and sought extra time, the Supervisor refused to accept the report and asked the petitioner to wait until further information is received with regard to the completion of his research work. Since October, 2021, the petitioner was not allowed to pursue and complete his Ph.D. and in this regard, he has made representation to the Head of the Department Sociology, the Registrar and the Vice-chancellor of the aforesaid University. It is in the aforesaid circumstances, when the petitioner was not being permitted to pursue his Ph.D., he had filed a writ petition before this Court being Writ - C No.1086 of 2023 which was dismissed as withdrawn with liberty to file afresh and subsequently, the petitioner filed another petition being Writ - C No.242 of 2023 which was disposed of by the Coordinate Bench of this Court by means of order dated 13.01.2023 directing the Vice-Chancellor, Dr. Shakuntala Misra National Rehabilitation University, Lucknow to decide the representation with regard to the grievance of the petitioner.

4. In compliance of the order dated 13.01.2023, the representation of the petitioner was decided by the impugned order which was communicated to the petitioner. In the impugned order dated 06.10.2022, it has been stated that the petitioner was admitted in the Ph.D. Sociology without being duly selected and in this regard, he has been repeatedly asked to submit an affidavit, which he has not furnished and accordingly, a decision has been taken. The said decision was forwarded to the Research Degree Committee, who has approved the cancellation of admission of the petitioner.

5. By means of order dated 13.12.2022, the Registrar of the University has communicated that the Research Degree Committee has approved the decision taken by the Departmental Research Committee pertaining to the cancellation of admission of the petitioner and lastly,

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by means of the order dated 23.01.2023, the Vice-Chancellor intimated the petitioner with regard to the cancellation of his admission.

6. It has been submitted by counsel for the petitioner that the petitioner was duly selected for Ph.D. course in the entrance exam conducted by the University in 2016. In support of his submissions, the copy of the provisional Admit Card as well as information regarding Ph.D. scholars enrolled in academic session 2016-17 has been annexed indicating that the petitioner has been duly enrolled in the Ph.D. for the academic Session 2016-17.

7. The respondent - University has put in appearance and vehemently opposed the present writ petition. It has been submitted that as per the material available with the respondent University, the petitioner was not qualified for Ph.D. Entrance Examination and has managed the admission in the Ph.D. through back door. It has been submitted that with regard to the admission, the petitioner was directed to submit an affidavit but he has not submitted the required affidavit. and his name was not mentioned in the final select list and his admission has been cancelled in the year 2022.

8. It is on the strength of the aforesaid facts that the impugned orders passed by the authorities of the respondent University cancelling the admission, have been supported and prayed for rejection of the writ petition and accordingly, it was submitted that the admission of the petitioner was in violation of the Ph.D. Regulations, 2009 issued by the University Grants Commission.

9. Considering the aforesaid facts, this Court had made a query from the respondents to indicate as to what took them five years from ascertaining as to whether the petitioner was not qualified in the entrance examination and as to how, he was pursuing his Ph.D. course for more than five years in the respondent University.

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10. With regard to the said query, no satisfactory explanation is forthcoming.

11. After hearing the counsel for the parties and perused the record, it is noticed that according to the petitioner, he appeared in the entrance examination conducted by the respondent University for admission to the Ph.D. courses. The petitioner has also annexed a copy of the information regarding Ph.D. scholars pertaining to the academic year 2016-17 where the name of the petitioner is occurring in the list pertaining to the Department of Sociology at Serial No.3. It is also not in dispute that since the date of admission, till passing of the impugned order sometime in 2022, the petitioner has been pursuing his Ph.D. Course.

12. Now coming to the judgments referred to by counsel for petitioner, in the case of **Rajendra Prasad Mathur (supra)** the dispute was with regard to cancellation of admission to the B.E. Course. The High Court allowed the writ petition and the Supreme Court while dismissing the appeals held that:

*"8. We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective engineering colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective engineering colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the engineering degree course and they had no legitimate claim to such admission. **But it must be noted that the blame for their wrongful admission must lie more upon the engineering colleges which granted admission than upon the appellants. It is quite possible that the***

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appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year BSc examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year BSc examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the engineering colleges which admitted the appellants because the Principals of these engineering colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these engineering colleges. We would therefore, notwithstanding the view taken by us in this Judgment, allow the appellants to continue their studies in the respective engineering colleges in which they were granted admission. But we do feel that against the erring engineering colleges the Karnataka University should take appropriate action because the managements of these engineering colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the engineering degree course. We also endorse the directions given by the learned Judge in the penultimate paragraph of his Judgment with a view to preventing admission of ineligible students." (emphasis added)

13. Further, in the case of **Ashok Chand Singhvi (supra)**, where the facts were similar to the current case, the Court observed that students cannot be made to suffer for the fault of the management of the university. The relevant paragraphs of the judgment are as follows:

*"14. It is urged by Mr Mehrotra, learned counsel appearing on behalf of the respondents, that the appellant could not be admitted and his admission was illegal. **There may be some***

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force in the contention of the learned Counsel, but when all facts were before the University and nothing was suppressed by the appellant, would it be proper to penalise the appellant for no fault of his? The admission of the appellant was not made through inadvertence or mistake, but after considering even all objections to the same, as raised by the said Officer-in-Charge, Admissions, in his note. The appellant was communicated with the decision of the Dean as approved by the Vice-Chancellor admitting him to the Second Year BE course. The appellant deposited the requisite fees and started attending classes when he was told that his admission was directed to be put in abeyance until further orders without disclosing to him any reason whatsoever.

15. It is curious that although the admission to the BE degree course of the University is governed by statutes of the University and admission rules, the said resolution of the Syndicate dated 13-12-1970 has also been kept alive. Neither the Dean nor the Vice-Chancellor was aware of the true position, namely, as to whether the said resolution had become infructuous in view of the statutes and the admission rules. A teacher candidate is likely to be misled by the said resolution. It is the duty of the University to see that its statutes, rules and resolutions are clear and unambiguous and do not mislead bona fide candidates. The University should have revoked the said resolution in order to obviate any ambiguity in the matter of admission or included the same in the statutes as part of the admission rules.

16. When the appellant made the application beyond the last date, his application should not have been entertained. But the application was entertained, presumably on the basis of the said resolution of the Syndicate. The appellant also brought to the notice of the Dean the said resolution and also the implementation of the same by admitting seven teacher candidates.

17. It is submitted on behalf of the University that it was through mistake that the appellant was admitted. We are unable to accept the contention. It has been already noticed that both the Dean and the Vice-Chancellor considered the

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objections raised by the Officer-in-Charge, Admissions, and thereafter direction for admitting the appellant was made. When after considering all facts and circumstances and also the objections by the office to the admission of a candidate, the Vice-Chancellor directs the admission of such a candidate such admission could not be said to have been made through mistake. Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant. In this connection, we may refer to a decision of this Court in Rajendra Prasad Mathur v. Karnataka University [1986 Supp SCC 740] . In that case, the appellants were admitted to certain private engineering colleges for the BE degree course, although they were not eligible for admission. In that case, this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of cancellation was upheld by the High Court. At the same time, this Court took the view that the fault lay with the engineering colleges which admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of these engineering colleges. Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission. The same principle which weighed with this Court in that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering." (emphasis added)

14. The said judgments have been followed and a similar approach is adopted by the Delhi High Court in the case of **Abha George (supra)**, the Delhi High Court was of the opinion that:

"18. In Javed Akhtar case [Javed Akhtar v. Jamia Hamdard, 2006 SCC OnLine Del 1504] , a Coordinate Bench of this Court considered a case where the petitioners' candidature was accepted for appearing in the entrance examinations, and they were admitted to the institution concerned. Their admissions were cancelled after they had attended the classes for one month. The facts of the case are very similar

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to the present case. The question framed by the court was in the following terms:

"21. ... This is not disputed that the petitioners filled the forms for appearing in the entrance examination and gave their correct date of birth. The forms of the petitioners were considered and they were allowed to appear in the examination. After their names appeared, they were called for counselling and after verifying the documents and certificates of the petitioners, they were given admission. The petitioners were issued identity cards after accepting the fees for the course from them and the petitioners were allowed to attend classes for a month and thereafter by communication dated 8-8-2006 the admission of the petitioners have been cancelled. **Whether Respondent 1 can be allowed to cancel the admission midterm in the facts and circumstances, when the petitioners have not concealed any thing nor produced any documents to mislead Respondent 1? Whether Respondent 1 will be estopped from cancelling the admission of the petitioners in the facts and circumstances?" [Emphasis supplied]**

19. The court answered the question thus:

"38. Therefore, **while granting the admission if the academic body has acted inattentively and mechanically, then they cannot be allowed to take the plea that the admission was never valid and that the petitioners were ineligible from the very inception and knowing the ineligibility they applied for admission. The respondents cannot be allowed to cancel the admission at their own convenience at any time of the year without considering the fact that if they cancel the admission after the session has started then the entire year of the petitioners will be spoiled as the petitioners would not be in a position to take admission in any other college/university. If this fact of their ineligibility for admission was**

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conveyed to them at the very start they would have taken admission in some other college/university.

39. In such situation, in view of the decision in *Sangeeta Shrivastava v. U.N. Singh* [*Sangeeta Shrivastava v. U.N. Singh*, 1979 SCC OnLine Del 202], **the petitioners cannot be penalised for the negligence of authorities. It is important to appreciate that the petitioners in the facts and circumstances cannot be accused of making any false statement or suppressing any relevant fact before anybody.** They clearly mentioned their date of birth in the application form for admission, and are not guilty of any fraud or misrepresentation. It was the duty of the university to have scrutinised the application form and the certificates thoroughly before granting admission to the petitioners and permitting them to attend the classes and not having done so they cannot cancel the admission thereafter. By accepting the application form and subsequently granting admission representation was made by the respondents that the petitioners' were eligible for admission and the petitioners' acting upon the same took admission and thus the petitioners' suffered a detriment. Had the respondents not made the representation that the application had been approved and granted admission the petitioners' would have applied and taken admission else where. Therefore the respondents are estopped from pleading that the petitioners were not entitled to a seat from the inception and that the admission is void ab initio and that the admission without fulfilment of the eligibility criteria is a nullity.

40. In the facts and circumstances of the case **the respondents cannot be allowed to take advantage of their own wrong and cannot be permitted to take the plea that under the prospectus they had the power to cancel the admission of ineligible student** and the principle of estoppel will operate

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against them. The respondents are estopped from cancelling the admission of the petitioners' and further from preventing them from pursuing the 'pre tib' course in the present facts and circumstances." [Emphasis supplied]

20. Applying these authorities in the present case, it appears that the petitioners' documents were accepted by the respective centres of Aiims, despite the fact that their qualifying examination results were declared one week later than stipulated in the prospectus. The petitioners have prosecuted their studies for almost two months prior to issuance of the impugned OM dated 18-10-2021. There is no allegation that the petitioners had misrepresented or concealed any information from Aiims —indeed, there cannot be, as the qualifying examination was conducted by Aiims itself. Applying the observations of the Supreme Court in Rajendra Prasad Mathur case [Rajendra Prasad Mathur v. Karnataka University, 1986 Supp SCC 740] , in the present case also, the blame lies more upon the institution than the petitioners. The candidates applied; their results were declared by Aiims, New Delhi; those results were submitted to the regional centres to which they have been assigned, and they were granted admission. Their admissions were cancelled after they had spent almost two months on the course. The judgment of this Court in Javed Akhtar case [Javed Akhtar v. Jamia Hamdard, 2006 SCC OnLine Del 1504] , in fact, goes further to hold that an academic institution cannot be permitted to cancel admissions after the course had started, at any time during the year, due to prejudice that would be caused to the candidates who were admitted as they would by then be unable to take admission in any other university to which they may have been admitted."

15. Law is, thus, well settled on the issue involved. Once, the University has granted admission and permitted petitioner to continue

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for five long years and his Ph.D. course is on the verge of completion, it is now not open for the University to restrain petitioner from completing his course. Even presuming some irregularity did occur at the time of admission in Ph.D. course, the same can not now be made the basis for denying petitioner from completing his course. Learned counsel for respondent University could not show from record that petitioner has in any manner misrepresented or played fraud or otherwise was maliciously involved in the said admission process and the decision was taken by the authorities of University in exercise of its powers. Thus, this Court finds that the respondent University cannot restrain petitioner from completing his Ph.D. course and is bound to consider his application for extension of period by one year as per rules.

16. This Court further finds that the country is making its best efforts to grow from a developing nation to a developed one. Repeatedly, it is said that to become a developed nation huge research work is required to be conducted within the Country. Now, when the students are pursuing their research work and are at the verge of completion it is highly improper to restrain them from completing their research on legal technicalities. The country is in dire need of research work. Petitioner has put more than five years in his Ph.D. course and is on the verge of submitting the same. Now denial of benefit of said research work to the nation in itself would be a huge loss. In the said circumstances also this Court is inclined to exercise its discretionary jurisdiction in favour of petitioner and against the respondent University.

17. In the given facts and circumstances of the case, the writ petition is **allowed** and the orders dated **13.12.2022 and 23.01.2023 passed by Research Degree Committee and the Registrar**, respectively, are **quashed** and a mandamus is issued to the respondent University to consider the application of petitioner for extension of one year after

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five years of Ph.D. course and permit him to submit fees in accordance with law. Such a decision shall be taken and communicated to the petitioner by the respondent University within a period of 15 days and accordingly petitioner shall be permitted to complete his Ph.D. course in accordance with law.

Order Date :- 1.8.2024

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(Alok Mathur,J.)