

Neutral Citation No. - 2024:AHC:60215-DB

Reserved on 18.03.2024

Delivered on 26.04.2024

Court No. - 3

Case :- SPECIAL APPEAL No. - 117 of 2024

Appellant :- Akhilesh Kumar

Respondent :- Allahabad Central University, Through Its Registrar And 2 Others

Counsel for Appellant :- Amar Sukh Rai, Kapil Dev Yadav

Counsel for Respondent :- Diptiman Singh, Gopal Das Srivastava

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

1. Heard Shri Amar Sukh Rai, learned counsel for the appellant, Shri Diptiman Singh appearing for respondent No.1 and Shri H. R. Mishra who appears for respondent no. 2 and 3.
2. The instant special Appeal is directed against the order dated 03.01.2024 passed by the learned Single Judge in Writ C No. 42952 of 2023 whereby the writ petition was dismissed.
3. The facts of the case briefly stated are that the petitioner-appellant applied for admission in MA political science in Shyama Prasad Mukharjee State Degree College in non-subject category on 30.09.2023.
4. The petitioner was granted provisional admission and was allotted a roll number. He also appeared for the viva-voce held prior to the written examinations stated to commence from 11.11.2023. However, on 05.12.2023, it was communicated to the petitioner that his admission stood cancelled. The letter dated 05.12.2023, addressed to the petitioner was by the Convenor, Political Science Department of the Shyama Prasad Mukharjee Degree College.
5. The contention of Amar Sukh Rai, learned counsel for the petitioner is that the actual order cancelling his admission has not been provided to him and that on the communication of such an order made to the petitioner. In any case the order cancelling the admission of the petitioner has been passed without any notice/information and without affording any opportunity to show cause. The petitioner has, therefore, been condemned without an opportunity of hearing. There is no allegation of fraud against the petitioner.

6. The reason given in the communication is that the petitioner was not eligible for admission as per the Allahabad University Rules pertaining to Admission 2022 and Clause 1.4.1(d) because the merit of the petitioner as per TGAT was only 26.25 which is lower than the cut-off which was 70. The petitioner would be eligible for admission only if he had more than 70 marks.

7. The communication dated 05.12.2023 also stated that admission fees deposited could be collected by him and as also the original certificates furnished by him.

8. No such cut-off, the basis for cancelling the admission of the petitioner, finds a mention in the online form filled by the petitioner.

9. Moreover, there exists no order of the Principal, the competent authority, who alone could have cancelled the admission of the petitioner. Besides, the report of the five member Committee constituted by the Principal to examine the admission in Political Science Department which has been filed on record states that there was negligence and ignorance on the part of the Admission Committee of Political Science. The petitioner has, therefore, been penalized for the fault of others.

9. Shri Diptiman Singh appearing for the first respondent, the Registrar University of Allahabad, has produced before this Court the screenshots of the online application form to show that once an application form is being filled the brochure is available online as is clear from the screen shots. The relevant brochure, in the case of the petitioner was with regard to PGAT and in the screenshot, the same is shown PGAT(PDFs/PGAT%202023.pdf). A print out of this Pdf has been produced for the perusal of the Court. Various clauses of the Brochure which are enumerated below, have been specifically referred to by Shri Diptiman Singh:-

(i). On page 3 of the Brochure, it is provided that admission to MA, Political Science, was permitted for Non-Subject Candidates.

(ii). On page 6 of the brochure is the information with regard to Non-Subject Candidates which apart from other things, which provides:-

“The merit of such Non-Subject Candidate will be computed on the basis of average of their scores in the respective two PGAT-2023 tests for which he/she is a Subject Candidate.”

(iii). On page 17 of the brochure is clause 1.2.2 which reads as follows:-

“The candidature of a candidate (and the admission granted on that basis) shall stand cancelled at any stage in case the candidate is found to be inelligible for appearing in the Admission Test.”

(iv). Clause 1.4.1(d) on page 22 of the brochure reads as follows:-

“The merit for such candidate will not be, in any case less than the last candidate of the subject in their respective category.”

(v). Clause 2.8.1 on page 25 of the brochure reads as follows:-

“The acceptance of the Application Form of the candidates shall be provisional and shall not give them any guarantee or right of admission.”

(vi). Clause 2.8.2 reads as follows:-

“The place of a candidate in the order of merit for any subject in M.A./M.Sc., or for M.Com. Shall be modified in case of an error in the calculation of his Computed Marks, and the admission of a candidate who is excluded from the said order or merit as a result its rectification of his Computed Marks shall be cancelled.”

(vii). The next clause relied upon is clause 2.10 which reads as follows:

“The University reserves the right to refuse admission to any candidate without specifying any reason and to make changes in the rules and procedures for admission.”

(viii). Clause 2.11 of page 26 of the brochure reads as follows:-

“The admission and enrollment of a candidate to any course of study in violation of these Rules, or of the Ordinances/Regulations/ other provisions of the University shall stand cancelled without retrospective effect if such violation comes to light at any stage.”

10. A printout of the online application form filled by the petitioner-appellant has also been produced. Shri Diptiman Singh has referred to the declaration at the bottom of this application which reads as follows:

“I hereby declare that I have read all the provisions in the notice/advertisement of the examination carefully and hereby undertake to abide by them. I further declare that I fulfill all the conditions of eligibility regarding age limits, educational qualifications etc. prescribed for admission to the examination. I hereby declare that all the entries/statements made in this application are true, complete and correct to the best of my knowledge and belief. In the event of any information being found false or incorrect or ineligibility being detected before or after selection the University can take action against me as per rule in case it is detected that I have mislead the University on any issue then I will be solely responsible for all penal consequences thereof.”

11. A similar declaration is to be found on the Admit Card issued to the petitioner, which bears his signature and reads as follows:-

“ISon/Daughter of hereby declare and solemnly affirm that I have fully understood all the details provided in the Brochure and accordingly all the particulars stated in the application form submitted by me are true to the best of my knowledge and belief. If at any stage it is found that the information furnished in the online application form is false/fake/misinterpreted/incorrect or myself does not satisfy the eligibility criteria for the course applied, my candidature may be cancelled, even after

appearing in the Examination in addition to any other action as may be deemed fit. I will not claim any refund of fees or compensation or any sort of damages.”

12. This Admit Card at the very bottom states that it provisionally allows to appear in the examination as per the particulars provided in his online application and that mere issuance of the Admit Card does not necessarily mean acceptance of eligibility, the documents regarding eligibility to be scrutinised subsequently.

13. On the strength of the above, it is contended that the submission that the petitioner-appellant was not aware of the conditions of admission as the same had not been intimated to him is, incorrect. All relevant information for filling online form was available on the Website and was accessible to all. Besides, there is a declaration in the online admission form filled by the petitioner that he has gone through all the material pertaining to the admission procedure and eligibility, as available on the website.

14. Under the circumstances, the admission of the petitioner was rightly cancelled as his score is 26.25 as against the minimum requirement of 70 which was the last cut-off, of a student getting admission in the subject category.

15. Reliance has been placed by Shri Diptiman Singh upon (i) the judgement of this Court in ***Adi Shakti Pandey v. Union of India (2017) (3) Allahabad Law Journal 522*** especially paragraph 18 thereof;

(ii) Judgment of the Apex Court in ***Employees State Insurance Corporation v. Dr. Vinay Kumar (2022)(2) SCT 162*** especially paragraph 6 thereof

(iii) Judgment of the Apex Court in ***Board of Governors in Supersession of Medical Council of India v. Dr. Priyambada Sharma and others 2022(4)S.C.T. 360*** especially paragraph 22-26 thereof.

16. Shri H. R. Mishra has also supported the order impugned.

17. Shri Amar Sukh Rai, in rejoinder, has submitted that 70 mark criteria which has been applied to cancel appellant's admission was not there on the date the petitioner had applied for admission.

18. The form was permitted to be filled without any restriction and it is only after relevant information has been filled in the online form and on each page thereof, would the online application proceed to the next page. Not only had the petitioner-appellant deposited his entire fees but had also attended classes and had also appeared for the viva voce. It is only five days prior to the commencement of the written examination that his admission was cancelled, relying upon undisclosed material, especially without there being order of the Principal in this regard and on account of the fault of the Post-graduate Admission Committee.

19. He has lastly submitted that an order has to be judged on the basis of reasons provided, therein. The reasons in the impugned order cannot be supplemented or explained on the basis of subsequent material or reasoning through a counter-affidavit.

20. We have considered the submissions made by learned counsel for the parties and perused the record.

21. The first contention of the learned counsel for the petitioner that all relevant information was not provided prior to his filling up the form online, cannot be accepted in view of the material produced by Shri Diptiman Singh in the form of various screenshots of the online application form and the relevant Brochure which was clearly accessible online, as per the screen shots, produced.

22. Insofar as the criteria of cut-off above 70 not being mentioned or provided at the time of filling of the application form is again not liable to be accepted because the cut-off would be determined only after all the applications have been processed. The requirement for admission to a Non-Subject was only that the Non-Subject Candidate should have a score, equal to or higher than the score of the last candidate admitted in the subject category. Admittedly, the petitioner did not have score equal to or more than the last candidate in the subject category which was 70. The petitioner was, therefore, ineligible for admission in view of the 1.4.1(d) of the Admission Rules for Session 2023-24 issued by Allahabad University.

23. The submission of learned counsel for the petitioner that cancellation of his admission is without opportunity of hearing and in violation of principles of natural justice appears attractive at the first flush. However, on the admitted facts, no amount of opportunity of hearing would have increased the petitioner's score of 26.25 to 70 which was the minimum required by him to get admission in MA, Political Science, in the Non-Subject category. Under the circumstances, opportunity of hearing would be an illusory exercise serving no useful purpose.

24. Moreover, since the entire information was available on the website and the petitioner made a declaration that he had gone through the same, the argument noted above cannot be accepted or sustained.

25. On the same reasoning, it cannot be said that the procedure followed for admission and its subsequent cancellation was in any manner, unfair.

26. The only other issue which survives for consideration is the submission that it was the Principal alone who could have cancelled the admission but no order passed by the Principal has been produced by the respondents nor was any such order made available to the petitioner.

27. It is not in dispute that the communication regarding cancellation of the admission of the petitioner was by the convener of the political science department and is based on the recommendation of the five member committee constituted by the Principal for scrutinising the post graduate admissions in the Institution. The copy of the communication was duly endorsed to the Principal. It is not the petitioner's case that the Principal, the so called competent authority, did not concur either with the communication sent to the petitioner-appellant or that the Principal did not concur that the finding of the five member committee constituted by the Principal himself.

28. The argument, under the circumstances, is a purely technical plea, which does not in any manner detract from the reasoning given for finding the petitioner-appellant ineligible for admission to M.A. Political Science in the Non-Subject category. In any case, the writ court can always ignore an illegality especially in matters where substantial justice has been done. This Court therefore, is not inclined to interfere on the basis of the submissions made.

29. In view of the foregoing discussion, we do not find any illegality in the order passed by the learned Single Judge, dismissing the writ petition filed by the petitioner. The instant Special Appeal is accordingly found to be without merit and is dismissed.

Order Date :- 26.04.2024

Aditya Tripathi