

Court No. - 46

Case :- SPECIAL APPEAL No. - 668 of 2023

Appellant :- Madan Mohan Malviya University Of Technology
And 3 Others

Respondent :- Milind Saxena And 16 Others

Counsel for Appellant :- Rajan Upadhyay, Awadhesh Kumar
Malviya, Sr. Advocate

Counsel for Respondent :- C.S.C.

AND

Case :- SPECIAL APPEAL DEFECTIVE No. - 835 of 2023

Appellant :- Madan Mohan Malviya University And 3 Others

Respondent :- Devashish Pandey And 16 Others

Counsel for Appellant :- Rajan Upadhyay, Sr. Advocate

Counsel for Respondent :- C.S.C., Awadhesh Kumar Malviya

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

1. These two special appeals have been preferred by the appellant-University challenging the judgment of the learned Single Judge dated 28.8.2023 passed in Writ-C No.9279 of 2023 (*Milind Saxena and 15 others vs. State of UP and 14 others*), Writ-C No.9299 of 2023 (*Devashish Pandey and 15 others vs. State of UP and 4 others*) and Writ-C No.1597 of 2023 (*Anmol Pandey and 34 others vs. State of UP and 4 others*). The writ petitions have been allowed and the orders cancelling the admission granted to the respondent-petitioners have been quashed. A writ of mandamus is also issued in the writs to the respondents to permit the petitioners to continue their studies and curriculum and granting permission to appear in the respective examinations and for declaration of their results.

2. It transpires that the appellant-University conducted Joint

Entrance Examination for admission to various B.Tech. courses in the University. Online applications were invited on the website of the University and thereafter entrance test was held. This was the process for the admission to the year 2020-21. In the year 2020-21, however, the Entrance Examination of the appellant-University got merged with the Joint Entrance Examination conducted for admission to various B.Tech. courses along with Joint Entrance Examination (Mains).

3. The respondent-petitioners' case is that they applied for admission to B.Tech course and also appeared in the Entrance Examination. Their further case is that they participated in the counselling conducted by the appellant-University and admissions were granted to them to various colleges. The respondent-petitioners, by now, have completed about four semesters.

4. Case of the appellant, however, is that it received various complaints as per which the respondent-petitioners were never granted admission as per the process stipulated. According to the University, some of the students had not even applied for appearing in the Entrance Examinations and, by any means, none of the them was eligible on the basis of merit for admission to the B.Tech. course. On receipt of complaints and upon perusal of materials available on record, the University proceeded to conduct an inquiry in the matter. For the purposes, notices of different dates were issued to the petitioners in which they were called upon to submit details regarding to their admissions.

5. Attention of the Court has been invited to the notices issued on 16th December, 2022, in which relevant records relating to grant of admission were demanded from the petitioners. It appears that the the petitioners sought time for submitting reply. Subsequent

notices were then issued to the petitioners. According to the appellants, though replies were subsequently filed, but no records in respect of admission, as was asked for by the University, was furnished by the respondents. The University then constituted an Inquiry-Committee and directed the respondent-petitioners to appear before it on 21st December, 2022. Inquiries were also held subsequently on other dates. A notice for cancellation of admission was then issued on 4.1.2023 clearly stating that the petitioners have not furnished proof of legitimacy and validity of their admission. The notice further informed the petitioners that the Inquiry-Committee has recommended cancellation of their admission. Show-cause-notice, accordingly, was issued to the petitioners calling upon them to explain as to why their admission be not cancelled. It is thereafter that the University, by separate orders passed in respect of the petitioners in the Writ, has cancelled the admissions granted to the respondent-petitioners. It is these cancellation orders which came to be challenged before the learned Single Judge.

6. The University while cancelling the admission granted to the petitioners observed that despite grant of reasonable opportunity, the petitioners have not been able to prove legitimacy of the admission granted to them. A decision in that regard was taken by the Academic Council of the University. The University also granted liberty of making representation to the Academic Council. This order of 9.1.2023 was challenged before this Court in writ petition wherein a direction was issued by the Writ Court to permit the petitioners to submit their representations and the Academic Council was directed to take a decision in the matter. It is thereafter that the Academic Council has taken final decision on

27th February, 2023, to cancel the admission granted to the respondent-petitioners. The order dated 27th February, 2023, has been separately passed in respect of all the writ petitioners.

7. We may refer to one such order passed in respect of student Abhijeet Srivastava, annexed at page 365 of the supplementary affidavit. This order notices that the petitioner had applied for admission and was allotted Roll No.6201147. His rank was GN-9405. The petitioner belonged to Economic Weaker Section and his rank was EWS 919. The order further records that the petitioner never appeared for counselling nor any seat was allotted to him during counselling. It further refers to a fabricated provisions allotment letter issued to petitioner on 25.11.2020, showing his rank to be GN-951 as against GN-9405. A finding is returned that the provisional letter is forged and was never issued by the University on 25.11.2020. It is further recorded that rank GN-951, shown to be the rank of the petitioner in the provisional allotment letter, is actually the rank of another student Vishwa Vikas and not of the petitioner. The order also records that admission has been granted to the petitioner in Computer Science and Engineering with his rank shown as GN-951, whereas the cut-off for Computer Science and Engineering in General open and EWS open category was GN-219 and GN-365, respectively. It has also been recorded that the petitioner had not furnished screenshot of E-mail receipt of provisional allotment letter issued to him. It is also mentioned that the provisional allotment otherwise required deposit of Rs.40,000/- as confirmation fee, on or before 28.11.2020, failing which the allotment was to be cancelled. As per the University, such allotment fee was never deposited by the petitioner and his plea that such fee was deposited in cash was contrary to the official notice issued by the University as per which

such deposit could be made only by bank-draft.

8. The petitioners contended before learned Single Judge that they had not only appeared in counselling, but had also deposited Rs.40,000/- fee in cash. It is also their case that there was no receipt issued to them. The petitioners also stated that provisional allotment letter was actually issued to them pursuant to which they have secured their admission. It is also contended that after such a long laps of time, initiation of proceeding for cancellation of admission is wholly arbitrary. It has also been asserted that in all subsequent semesters, the petitioners have deposited fee without any objection by the University. Results have also been declared of four semesters in which the petitioners have studied. Petitioners further asserted that no action otherwise has been taken against the employees of the University and the petitioners are made a scapegoat and their career was being ruined. Some of the petitioners have also availed of scholarship.

9. Learned Single Judge, during the course of hearing of the writ petition, was apparently apprised by the counsel for the University that no inquiry was conducted against the petitioners. This finding is contained in paragraph-22 of the judgment of the learned Single Judge, which is reproduced herein after:

"22. When asked by the court regarding any inquiry conducted against the candidates/petitioners, Sri Ramesh Upadhyay fairly submitted that inquiry has been conducted against the officials and staff of the University and other inquiries are still to be held, but till today, no inquiry has been conducted against the petitioners."

10. An application has thereafter been moved by the counsel for the University to modify paragraph-22 on the ground that such statement was never made before learned Single Judge. The learned Single Judge has disposed of the application of University by observing as under:

"4. Prima facie, I find that the prayer made in the correction application is infact in the nature of review/clarification of my order in relation to 'paragraph 22' of the order, however, the said paragraph was written and mentioned **in relation to the inquiry to hold the petitioners guilty of forging provisional letters and for no other purpose**, inasmuch as, in other parts of the judgment, it has been elaborately recorded that certain notices were issued by the University to the students, they had appeared before the University and also produced certain documents.

5. In view of the above, in paragraph 22 of the judgment of this Court, words "no inquiry has been conducted against the petitioners" have to be read **in relation to holding the provisional seat allotment letters as forged by the petitioners and not for any other purpose** and the statement of Shri Ramesh Upadhyay, learned Senior Counsel recorded in the said paragraph has to be read and understood as such.

6. The correction application is, accordingly, **disposed off.**"

11. Shri G.K. Singh, learned Senior Counsel assisted by Shri Rajan Upadhyay, learned counsel for the appellant-University, submits that the respondent-petitioners are beneficiary of fraud and learned Single Judge has fell in error in allowing their petitions. It is submitted that the University had, in fact, conducted an inquiry after affording opportunity to the petitioners, which fact has not been taken into consideration. It is also submitted that all provisional allotment letters are forged inasmuch as no counselling on such date was actually conducted by the University. A specific assertion in that regard is made in paragraph-11 of the short-counter affidavit, which is reproduced herein after:

"That, the petitioners, who were admitted in the year 20-21 have submitted provisional seat allotment letter dated 25.11.2020 while the petitioners admitted in the year 2021-22 submitted provisional seat allotment letters dated 3.8.2021 and 2.11.2021, but no such provisional seat allotment letters were issued by the university on 25.11.2020, 3.8.2021 and 2.11.2021. No provisional seat allotment was done by the University on 25.11.2020, 3.8.2021 and 2.11.2021. Thus the provisional allotment letters filed by the petitioners as annexure to the writ petition are forged and fabricated documents."

12. It is further pointed out that all the petitioners claim allotment of B.Tech. seat in the last counselling (spot-round). Spot counselling, in fact, was conducted on 27.11.2020 and that no prior

spot counselling was conducted, particularly on 25.11.2020. Attention of the Court has been invited to Page-754 of the Paper-Book, which clearly requires the applicants to deposit Rs.40,000/- for seat confirmation by way of bank-draft in the account of the appellant-University or else they would not be permitted to secure admission. It is urged that none of the petitioners have furnished any proof of such deposit of Rs.40,000/- by draft which fact has been completely omitted from consideration by learned Single Judge.

13. Challenge is also laid to the observation made by learned Single Judge in paragraph-16, which refers to an inquiry subsequently conducted by the University to ascertain the guilt of its own employees. It is urged that this subsequent inquiry has no relevance for the purposes of determination of issue relating to legality of the admission offered to the petitioners. It is, therefore, urged that the learned Single Judge has fell in error in allowing the writ petition by overlooking specific allegation of fraud attributed to the petitioners.

14. Opposing the argument of the University, Shri Ashok Khare, learned Senior Counsel assisted by Shri A.K. Malviya, submits that the University, without any basis, has cancelled the admissions granted to the petitioners after they have completed at least four semesters. It has also been submitted that fee relaxation etc. were also granted to the petitioners during COVID. It is urged that interference made by the University, at this late stage, has caused grave prejudice to the petitioners and the judgment of the learned Single Judge requires no interference.

15. We have heard learned counsel for the parties and perused the materials on record.

16. The admission process to B.Tech. course for the Academic Session-2020 was undertaken by the appellant-University pursuant to advertisements issued, which required the candidates to apply for Entrance Examination, which was followed with online counselling. For the subsequent year, the counselling was to be conducted along with J.E.E. Main Counselling-2021. The guidelines issued in that regard have been brought on record. The candidates were required to get themselves registered and counselling registration fee of Rs.2,000/- was required to be deposited by them. Different rounds of counselling was conducted by the University and it is admitted that none of the respondent-petitioners secured admission therein. Lastly, a spot counselling was held by the University in which all the petitioners claim to have secured their seat. Most of the petitioners have relied upon provisional seat allotment letter of 25th November, 2020. The letter has been allegedly issued by the co-ordinator counselling, which required the applicant to deposit seat confirmation fee of Rs.40,000/- on or before 28.11.2020 by bank-draft, or else the allotment was to be cancelled. The specific case of the University is that provisional seat allotment letter relied upon by all the petitioners are forged. It is also their specific case that no spot counselling was, in fact, conducted on 25.11.2020 and that the date for spot counselling was 27.11.2020.

17. The specific assertion made by the University in paragraph-11 of the counter affidavit has not been effectively countered by the petitioners. There is no consideration by learned Single Judge of the plea taken by University with regard to the provisional seat allotment letter being forged. It is also admitted to the petitioners that in fact, the amount of Rs.40,000/-, as was required to be deposited by way of draft, was never submitted by them. The case

of the petitioners that they were permitted to deposit such amount by cash although has been accepted by learned Single Judge relying on some subsequent inquiry report, but we are not much impressed by the conclusions drawn in that regard. The reason for it is apparent. There is no decision placed on record, by any of the petitioners, to demonstrate that the competent authority had taken a decision to accept deposit of Rs.40,000/- by cash. The purpose of depositing such amount by draft was to ensure transparency in the admission process and to rule out any manipulation in the admission process. In the absence of any decision taken by the competent authority to allow deposit of fee by cash, a serious doubt had arisen on the claim of the petitioners with regard to deposit of such amount of Rs.40,000/- in cash. Even otherwise, we find that no receipt of such cash deposit was ever placed on record by the petitioners. *Prima facie*, the appellant has able to show that the petitioners had secured admission by playing fraud.

18. Law is settled that fraud and justice cannot dwell together. Instances of the kind in which admissions are secured by playing fraud requires closer scrutiny by the Courts. No leniency can be shown in such cases particularly when the University did afford opportunity to the petitioners to put forth their case, and they had apparently failed to place on record any document either evidencing deposit of fee of Rs.40,000/- or produce any draft prepared by them in terms of the specific requirement indicated in the spot counselling guidelines. There was otherwise a serious allegation of fraud attributed to the provisional counselling letter on the basis of which the petitioners had secured their admission. The details regarding the rank shown in the provisional allotment letter to belong to other candidate was also not effectively challenge.

19. We deem it appropriate to reproduce the specific requirement of deposit of Rs.40,000/- by way of draft in the spot counselling notice annexed at Page 753-754 of the Paper-Book, which is extracted herein after:

"सीट कन्फर्मेशन

प्रतिभागियों से अनुरोध है कि वे सीट कन्फर्मेशन हेतु निर्धारित शुल्क रु. 40000.00 (चालीस हजार मात्र) का बैंक ड्राफ्ट मदन मोहन मालवीय प्रौद्योगिकी विश्वविद्यालय गोरखपुर के पक्ष में जमा कर अवश्य ले आये अन्यथा स्पॉट काउंसलिंग से बाहर हो जायेंगे। सीट आवंटन के तुरंत बाद ड्राफ्ट न जमा कर पाने की दशा में उनकी सीट मेरिट में अगले प्रतिभागी को आवंटित कर दी जाएगी। "

No decision by any competent authority has otherwise been placed on record exempting such requirement.

20. Learned Single Judge has placed reliance upon an inquiry report conducted subsequently by a 3-Member Inquiry Committee dated 29/31.5.2023. This inquiry report has been submitted on the basis of a direction issued by the State with the object of fixing responsibility of the guilty employees. Any observation made in such inquiry report ought not to have been relied upon *ipso facto* to nullify the *prima facie* allegations of fraud alleged by the University when the findings contained in the order of cancellation was not shown to be incorrect.

21. The argument of the petitioners that there was no reference made to the petitioners in the three members inquiry report is wholly misconceived, inasmuch as, the object of such inquiry was merely to determine the guilt of the employees and not to consider the legality of the admission granted to the petitioners. This inquiry was otherwise conducted several months after cancelling the admission granted to the petitioners. The case of the petitioners had to be dealt with on the basis of inquiry conducted by the University consequent upon notices issued to them and the reply submitted to it by the petitioners. Non-consideration of the case of the petitioners with reference to such material has rendered the

adjudication by learned Single Judge unsustainable in law.

22. The arguments advanced on behalf of the petitioners that Rs.40,000/- was deposited in cash and had also been adjusted by the University is based upon the pleading contained in paragraph-51 of the writ petition, which is wholly vague. It is difficult to construe it as a positive assertion on the part of the petitioners that the cash amount deposited by petitioners of Rs.40,000/- was, in fact, refunded or adjusted to them.

23. Similarly, provisional allotment letters of 3rd August, 2021 and 2nd November, 2021 are also alleged to be forged inasmuch as on these days also, no spot counselling had taken place. There is no finding returned by learned Single Judge on the crucial aspects whether any spot counselling was held on 25.11.2020, 3.8.2021 and 2.11.2021 or whether any such spot counselling letters were issued to the University.

24. Consequently, the present appeals succeed and are **allowed**.

25. Judgment and order of learned Single Judge dated 28.8.2023 is set aside. The matter stands remitted to learned Single Judge for a fresh determination of cause upon consideration of relevant aspects in light of the above observations. Specific allegation of fraud in securing the admission shall be adjusted to by the learned Single Judge. Since career of large number of students are at stake, we request the learned Single Judge to accord primacy to matter in issue, as per His Lordship's earliest convenience.

Order Date :- 23.11.2023

LN Tripathi