Court No. - 2

Case :- WRIT - C No. - 5433 of 2024

Petitioner :- Neelesh And Others
Respondent :- State Of U.P. Thru. Prin. Secy., Deptt. Of Technical Education, Lucknow And Others
Counsel for Petitioner :- Ajay Pratap Singh,Abhay Singh
Counsel for Respondent :- C.S.C.,D.K. Singh Chauhan,Ravi Singh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Shri Abhay Singh learned counsel holding brief of Shri Ajay Pratap Singh, learned counsel for the petitioners, learned Standing Counsel for State respondents/ opposite parties and Shri D.K.S. Chauhan, learned counsel for opposite party no.3. Notice for opposite party no.4 has been accepted by Shri Ravi Singh.

2. In view of the proposed order, notice to opposite party no.5 is dispensed with.

3. By means of this petition, the petitioners have prayed the following reliefs:-

"I. To issue a writ, order or direction in the nature of MANDAMUS commanding the Opposite Parties specially the Opposite Party No. 2 and 3 to allow the petitioners to deposit the rest amount of the fee online on the portal of the opposite party no. 3 for the D. Pharma Course 1stYear for the educational session 2023-24 as the petitioners have already appeared in the counseling as well as entrance exam and further the documents of the petitioners have also been verified by the authorities nominated by the opposite party no 3 within period of 3 days in the interest of justice.

II. To issue a writ, order or direction in the nature of MANDAMUS commanding the Opposite Parties specially the Opposite Party No. 2 and 3 to allow the petitioners to appear/participate in D. Pharma Course 1st Year examination for the academic session 2023- 24 which has been scheduled w.e.f. 22th June 2024. in the interest of justice."

4. Notably, in the identical issue this Court has passed a detailed order dated 18.06.2024 in Writ-C No.4932 of 2024, 'Akash Srivastava & Others versus State Of U.P. & Others' whereby the same has been dismissed. The order reads as under:-

"1. Heard Shri Abhay Singh learned counsel holding brief of Shri Ajay Pratap Singh, learned counsel for the petitioners, learned Standing Counsel for State respondents/ opposite parties and Shri D.K.S. Chauhan, learned counsel for opposite party no.3. Notice for opposite party no.4

has been accepted by Shri Ravi Singh.

2. In view of the proposed order, notices to opposite party nos.5 and 6 are dispensed with.

3. By means of this petition, the petitioners have prayed the following reliefs:-

"(i) To issue a writ, order or direction in the nature of CERTIORARI thereby quashing the impugned order dated 26.4.2024 passed by the opposite party no. 3 i.e. Secretary, Joint Entrance Examination Council, Uttar Pradesh, Guru Govind Singh Marg, Bans Mandi Crossing, Lucknow Contained as Annexure No. 2 to 11 to the writ petition for the petitioner No. 1 to 10 and so for the petitioner No. 11 to 14 concerned, the impugned order dated 24.4.2024 passed by the opposite party no. 3 may also be quashed after summoning the same from its custodian.

(ii) To issue a writ, order or direction in the nature of MANDAMUS commanding the Opposite Parties specially the Opposite Party No. 2 and 3 to allow the petitioners to deposit the rest amount of the fee online on the portal of the opposite party no. 3 for the D. Pharma Course 1st Year for the educational session 2023-24 as the petitioners have already appeared in the counseling as well as entrance exam and further the documents of the petitioners have also been verified by the authorities nominated by the opposite party no 3 within period of 3 days, in the interest of justice."

4. At the very outset, attention has been drawn towards Annexure No.1, which is an order dated 14.03.2024 passed by this Court in Writ-C No.2469 of 2024 in the case of the present petitioners, whereby the aforesaid writ petition has been decided finally at the admission stage, without entering into the merits of the issue, giving liberty to the petitioners to prefer a fresh representation to the opposite party no.3, who shall decide the same within a period of four weeks. In the aforesaid writ petition, the petitioners have prayed that the opposite party may be directed to allow the petitioners to deposit the remaining fees online on the portal of opposite party no.3 for the D. Pharma Course 1st Year for the educational session 2023-2024 in pursuance of petitioners having already appeared in the counselling as also since petitioners' documents have already been given.

5. The representation of petitioners has been rejected on 26.04.2024 (Annexure No.2). The main reason rejecting the representation of the petitioners is that the petitioners have not deposited the aforesaid remaining fees on or before 31.12.2023, the last date to deposit the fees.

6. Shri D.K.S. Chauhan has drawn attention of this Court towards his counter affidavit filed on 14.06.2024 referring Annexure No.3, wherein it has been categorically said by the opposite party no.3 to all the Institutions to receive the fees of the students between 14.12.2023 to 26.12.2023 at 11:59 P.M., pursuant thereto 255 students have deposited the fees. Since some of the students could not deposit the fees, therefore, they approach this Court by filing Writ-C No.11765 of 2023, 'Adarsh Tiwari and Others Vs. State of U.P.' and that writ petition has been decided vide judgment and order dated 31.12.2023, which reads as under:-

"1. The matter has been placed before this specially constituted bench during on going winter vacation under an order passed by the Hon'ble Chief Justice.

2. Heard Sri Ajay Pratap Singh, the learned counsel for the petitioners and Sri Shailendra Singh, the learned Chief Standing Counsel, Sri Anirudh Singh, the learned Standing Counsel for the State respondent and Sri D.K. Singh Chauhan, the learned counsel for the opposite party no. 3-Joint Entrance Examination Council and Sri Ravi Singh, the learned counsel for opposite party no. 4-Pharmacy Council of India.

3. By means of the instant writ petition, the petitioners, who are 74 students seeking admission to D. Pharma Courses, have sought issuance of a writ of mandamus commanding the opposite party nos. 2 & 3, namely, Board of Technical Education, U.P. and Joint Entrance Examination Council, U.P. respectively, to permit them to deposit the balance amount of fee by online mode through the portal of the opposite party no. 3-Joint Entrance Examination Council, for first year of D. Pharma Course for academic session 2023-2024.

4. Briefly stated, facts pleaded by the petitioners are that the institutions, in which they are seeking admission and the names whereof are mentioned in para 4 of the writ petition, have been granted approval by the Pharmacy Council of India. The petitioners had appeared in the Joint Entrance Examination for admission to the diploma course and have been found to be eligible to D. Pharma courses. The counseling schedule was published on 16.09.2023, as per which the counseling for D. Pharma courses was scheduled to be held between 25.09.2023 and 19.10.2023.

5. The learned counsel for the petitioners has submitted that the issue involved in the present writ petition has been decided by this court in the judgment dated 27.09.2023 passed by a coordinate bench of this court in a bunch of writ petitions, the leading case being Writ-C No. 8389 of 2023 in Re: H.M.S College of Pharmacy, Bulandshar Thru. President Himanshu Sharma and Another Vs. State of U.P through Additional Chief Secretary, Department of Technical Education, Lucknow and three others, wherein this court has issued a direction to grant affiliation to the institutions, which have fulfilled the criteria fixed by the Pharmacy Council of India (hereinafter referred as 'P.C.I.') and have obtained approval, unless the State Government, on the basis of cogent material, approaches the P.C.I. for revoking the approval in terms of Section 13 of the Pharmacy Council of India Act.

6. Thereafter a fresh counseling schedule was published, as per which the balance fee was required to be deposited from 20.12.2023 till 26.12.2023 and classes are to commence w.e.f. 01.01.2024.

7. 25.12.2023 was a holiday due to Christmas.

8. The petitioners claim that some of them could not arrange money within the aforesaid period and they have requested for permission to deposit the balance fee today itself.

9. Sri D.K. Singh Chauhan, the learned counsel for the opposite party no. 3 has stated that the date fixed for deposit of balance fee has already expired and the petitioner have not deposited the balance fee within the

prescribed period and they have no right to seek extension of period for deposit of fee.

10. The learned counsel for the opposite parties have opposed the writ petition and they have submitted that as per the order dated 06.09.2023 passed by the Hon'ble Supreme Court in Misc. Application No. 1927 of 2023 in Civil Appeal N. 9048 of 2012, Parshwa Nath Charitable Trust v. All India Council for Technical Education and others, the counseling has to be completed by 30.12.2023.

11. The learned counsel for the respondents have submitted that in case the counseling schedule is disturbed at this stage and counceling is ordered for admissions to the petitioners' institutions, it will be in violations of the aforesaid order passed by the Hon'ble Supreme Court.

12. The learned counsel for the parties have expressed their consent for final disposal of the writ petition at this stage.

13. What appears from the material placed before the Court at this stage is that the petitioners had applied for admission to D. Pharma courses in the academic session 2023-24 through the Joint Entrance Examination which was advertised in March, 2023. Some disputes occurred regarding recognition and affiliation of some institutions regarding which numerous writ petitions were filed in this Court and the same were decided by means of a judgment and order dated 27.09.2023 passed in leading writ petition being Writ C No. 8389 of 2023. The respondents have filed a special appeal against the aforesaid order bearing Special Appeal No. 504 of 2023, which is pending consideration before a Division Bench of this Court in which no inter order has been passed. Thereafter, numerous other writ petitions have been disposed of granting provisional affiliation to the institutions and admission of their students.

14. The time provided for deposit of balance fee as per the revised counseling schedule was from 23.12.2023 to 26.12.2023. 25.12.2023 was a holiday. the petitioners claim that the time provided was short and although they deserve to be admitted to D. Pharma courses, some of them could not arrange the amount of balance fee within the short period. Seats are lying vacant, which are to be filled by the petitioners upon their being allowed to deposit the balance fee.

15. In case the petitioners are not granted permission to deposit the balance fee, it would result in denial of education to them, inspite of they having qualified Joint Entrance Examination and their right to education will be violated for no fault of theirs.

16. In view of the aforesaid discussion, this Court is of considered view that it would be in the interest of justice to allow the petitioners to deposit the balance fee by the end of 31.12.2023 itself.

17. The opposite parties shall make necessary arrangements to enable the petitioners to deposit the balance fee.

18. In view of the aforesaid terms, the writ petition stands decided finally.

19. It is further provided that in case the seats have been filled up in the institutions concerned in the meantime, the opposite party no. 3 shall

accommodate the candidates in some other institutions in which the seat is available."

7. This Court vide aforesaid order directed that the petitioners of that writ petition may be permitted to deposit the balance fees by the end of 31.12.2023 itself.

8. The aforesaid order was intimated to the concerning authority by the opposite party no.3 making request that the fees of the students may be accepted by 11:59 P.M. on 31.12.2023 (Annexure No.6).

9. Shri Chauhan has also drawn attention of this Court towards Annexure No.1 of the counter affidavit, which is an order of the Hon'ble Apex Court dated 06.09.2023 in the same issue, which reads as under:-

"1. Heard Mr. R. Venkataramani, learned Attorney General for India, Mr. Tushar Mehta, learned Solicitor General of India, Mr. A.N.S. Narikarni and Dr. Abhishek Manu Singhvi, learned senior counsel, Mr. Harish Pandey, learned counsel.

2. Though normally we would not have entertained the application for extension of period, however, taking into consideration that the career of about four lacs students is at stake, by way of last opportunity, we are inclined to allow the application in terms of prayer clause "(a)" in all the applications, which are extracted below:-

M.A. No.1927/2023 in C.A. No. 9048/2012

"(a) Grant extension of the date for completion of approval process up to October 31st 2023 and appeals/compliances process till November 30th 2023 to the Applicant/Pharmacy Council of India for the academic year 2023-2024;"

MA 1928/2023 in C.A. No. 9048/2012

"(a) extend the cut-off date for grant of affilitation upto 15.09.2023 in resepct of Applicant Technical Institutions/courses approved by AICTE for the Academic Session 2023-24"

MA 1929/2023 in C.A. No. 9048/2012

"(a) Extend/relax the cut-off dates specified in order dtd. 24.03.2023 for affiliation and completion of Admissions process by the Applicant University to AICTE and CoA approved courses/institutions by a reasonable time, as provided in para 21 of this Application."

3. Needless to state that the period for counseling shall stand extended by one month thereafter.
4. The applications are, accordingly, disposed of."

10. Shri Chauhan has submitted that in compliance of the order of the Apex Court, the date to accept the fees of the students has been extended till 31.12.2023.

11. However, learned counsel for the petitioners has drawn attention of this Court towards the order of the Delhi High Court in W.P. (C)

12151/2019, 'Divij & Ors. versus Guru Gobind Singh Indraprastha', referring Para 86 to submit that the Delhi High Court has held that if the candidates have deposited some fees and appeared in the counselling, their admission should not be cancelled only for the reason of non-payment for balance fees if the narrow timeline have been given to deposit the fees. Para 86 reads as under:-

"86. Therefore, in my view, these are not the cases where students are being given admission after the cut-off date prescribed in the Parshvanath Charitable Trust case. These are the candidates who joined the admission fray prior to the cut-off date. These are students who only seek restoration of their admission which was wrongly cancelled only on account of non-payment of balance academic fee qua which very narrow timelines had been fixed contrary to the schedule fixed in the Admission Brochure or that which was prescribed by the Supreme Court in Parshvanath Charitable Trust case."

12. On that, Shri D.K.S. Chauhan has submitted that this is a case where earlier the time was given to deposit the fees on or before 26.12.2023 but when some candidates have not deposited the fees on or before 26.12.2023, in compliance of the order of this Court in Re; Adarsh Tiwari (supra), the date was extended till 31.12.2023 but the present petitioners have not deposited the fees on or before 31.12.2023, even the petitioners have approached this Court for redressal of their aforesaid grievance in the month of March, 2024 as their writ petition has been disposed of on 14.03.2024, therefore, as per Shri Chauhan, the present petitioners have not promptly approached this Court immediately after 31.12.2023.

13. Shri Chauhan has further submitted that now the examination of D. Pharma Course 1st Year for the educational session 2023-2024 would be commenced on 22.06.2024, so the present petitioners may not be permitted to deposit the fees at this stage.

14. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that when the Hon'ble Apex Court as well as this Court has granted liberty to the candidates to deposit the fees by 31.12.2023 and the petitioners have admittedly not deposited the fees by that cut-off date, therefore, there is no infirmity or illegality in the impugned order dated 26.04.2024 rejecting the representation of the petitioners to accept the remaining fees.

15. If the petitioners were aggrieved on or after 31.12.2023, they must approach this Court immediately thereafter, but they filed the writ petition in the second week of March, 2024, wherein the direction for disposal of the representation has been passed and pursuant to that order of this Court, the representation of the petitioner has been rejected on 26.04.2024. Then the petitioners approached this Court in the month of May, 2024. When the final examinations are going to take place on 22.06.2024, then at this stage, such direction may not be issued in favour of the petitioners to deposit the remaining fees as it would disturb the entire scheme of examination, which would affect the other students adversely, who have already deposited their fees within time and have studied the course. Therefore, in view of the equitable justice too no relief can be granted to the present petitioners.

16. Accordingly, this writ petition is dismissed. No order as to costs."

5. Therefore, the present petition is also **dismissed** in the light of aforesaid judgment/order.

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[Rajesh Singh Chauhan, J.]

Order Date :- 19.6.2024
Om

Digitally signed by :-
OM PRAKASH MISHRA
High Court of Judicature at Allahabad,
Lucknow Bench