

ITEM NO.1+28 Court 6 (Video Conferencing)

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Item No.1:

Petition(s) for Special Leave to Appeal (C) No(s). 8148/2020

(Arising out of impugned final judgment and order dated 10-06-2020 in SA No. 563/2019 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

SAHIR SOHAIL & ORS.

Petitioner(s)

VERSUS

DR. A.P.J. ABDUL KALAM TECHNICAL UNIVERSITY & ORS. Respondent(s)

(IA No. 81099/2020 - GRANT OF INTERIM RELIEF)

With

Item No.28:

Petition(s) for Special Leave to Appeal (C) No(s). 10546/2020

(FOR ADMISSION and I.R. and IA No.87536/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 07-09-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) Mr. Gopal Sankarnarayanan, Sr. Adv.
Mr. Ruchir Ranjan Rai, Adv.
Mr. Anilesh Tewari, Adv.
Mr. Desh Deepak, Adv.
Mr. Mahesh Kumar, Adv.
Mr. Suushant Yadav, Adv.
Ms. Devika Khanna, Adv.
Mrs. V.D. Khanna, Adv.
For M/s. Vmz Chambers, AOR

Signature valid

Digitally signed by
ASHA SUMATHYAL
Date: 2020.09.07
18:02:45 GMT
Reason:

Mr. Jitender Mohan Sharma, Sr. Adv.
Mr. Ajit Sharma, AOR

For Respondent(s) Mr. Amitesh Kumar, Adv.
Ms. Binisa Mohanty, Adv.
Ms. Priti Kumari, Adv.
Mr. Mritunjay Kumar Sinha, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP(Civil)10546/2020

Learned senior counsel for the petitioner seeks to withdraw the present petition.

The special leave petition is accordingly dismissed as withdrawn.

SLP(Civil)No.8148/2020

We have heard learned counsel for the parties at some length as it is an issue of the career of the students. However, we find not only from the facts of the present case, but also what emerged in the connected matter i.e. SLP(Civil)No.10546/2020 that the Jharkhand State open exam process itself appears to be a complete fraud. We must also fault the University to some extent which did not carry out an appropriate verification as also the State Government which should have kept a watch for such fraudulent exam systems which operate out of one room! We would call upon the University and the State Government to take immediate corrective action and also bring the defaulters to book.

We do have sympathy but this is not a case where we can really translate our sympathy to a relief in the present case, more so, in view of the fact that since this exam system is found to be fraudulent, the petitioners before us will never have a recognized plus two status and to give such students the opportunity to get a degree from the University will create a great anomaly.

We, thus, reluctantly dismiss the Special Leave Petition.

At this stage, learned senior counsel for the petitioner points out that the continuation on the website of the recognition of the Board is not only creating a problem in Jharkhand but also in other Universities and hence immediate steps should be taken in this behalf. We direct all concerned to do the needful within three days from today.

Pending application shall also stand disposed of.

(ASHA SUNDRIYAL)
AR-CUM-PS

(ANITA RANI AHUJA)
ASSISTANT REGISTRAR

HIGH COURT JUDGMENT

Court No. - 1

AFR

Case :- SPECIAL APPEAL No. - 563 of 2019

Appellant :- Dr. A.P.J. Abdul Kalam Technical University Lko.And Anr.

Respondent :- Sahir Sohail And Ors.

Counsel for Appellant :- Atul Kumar Dwivedi

Counsel for Respondent :- C.S.C.,Anilesh Tewari,Desh Deepak Singh

Hon'ble Pankaj Kumar Jaiswal,J.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Sandeep Dixit, learned Senior Advocate assisted by Sri Atul Kumar Dwivedi, learned counsel for the appellants and Sri H.P. Srivastava, learned Additional Chief Standing Counsel for the State and Sri Anilesh Tiwari and Sri Desh Deepak Singh, learned counsel for the private respondents.

2. The present intra-court appeal is directed against the judgement and order dated 6.12.2019 passed by the learned Single Judge in Writ Petition No.23929 (MS) of 2019 preferred by the private respondents impugning the order dated 14.8.2019 issued by the appellant-University cancelling the enrollment of all such students, who had submitted their Class-XII certificate issued by the Jharkhand State Open School, Ranchi and were admitted for various engineering courses by the several colleges affiliated to the appellant-University against management quota. On enquiry, it was found that the Jharkhand State Open School, Ranchi was a bogus and fictitious body and was not authorised to issue any educational certificate to the students.

3. Learned Single Judge vide impugned judgement and order has allowed the writ petition and set aside the order dated 14.8.2019 relying on the judgements in *Ashok Chand Singhvi Vs. University of Jodhpur and others*, reported in (1989) 1 SCC 399 and *Suresh Pal and others Vs. State of Haryana and others*, reported in (1987) 2 SCC 445. Learned Single Judge has held that the students were deceived by the Jharkhand State Open School, Ranchi, which also deceived the appellant-University and, the students were not at fault. The students have cleared their first year and are in the second year of the engineering course, and it would be unjustified to

cancel their admissions at this stage and then ask them to complete their XII standard.

4. Dr. A.P.J. Abdul Kalam Technical University, Lucknow (for short 'AKTU') formerly Uttar Pradesh Technical University (UPTU), was established by the Government of Uttar Pradesh on 8th May, 2000 by the Uttar Pradesh Technical Universities Act, 2000 (Act No.23 of 2000). Under the said Act, "Technical Education" includes programmes of education, research and training in engineering, technology, architecture, town planning, pharmacy, applied arts and crafts and such other programmes and areas that the Central Government may declare by notification in the Official Gazette in consultation with All India Council for Technical Education (for short 'AICTE'). On 9.9.2015, the UPTU was official named as Dr. A.P.J. Abdul Kalam Technical University, Lucknow (AKTU). The University is affiliating in nature and its jurisdiction spans the entire state of Uttar Pradesh. It is one of the largest Technical Universities in India and perhaps in Asia. Because of its size, the number of colleges affiliated to it, and geographic dispersion, it is sub-divided into five zones with 45–50 colleges in each zone for the ease of management and facilitating inter-zonal comparison and possible internal competition to enhance quality of teaching-learning processes.

5. The University envisions to facilitate and nurture the quality of technical education and research in its own premises as well as all affiliating institutions. At present, there are 785 Colleges and Institutions affiliated to the University. The task of the University included conducting State Level Entrance Examination (U.P.S.E.E.) for admission to various programs in institutions affiliated to it. The University conducts central examinations in each semester for all the affiliated colleges and the institutions. In 2019, around 4,00,000 students were enrolled in its various programmes.

6. The University offers undergraduate courses in engineering, architecture, hotel management and catering technology, fashion and apparel design, and pharmacy. These lead to degrees of B.Tech, B.Arch, BHMCT, BFAD, and B.Pharma respectively. The university offers postgraduate courses in computer applications and business administration leading to degrees of MCA, MBA and MBA (Rural Development).

7. As enshrined in the University Act, the University aims to provide and upgrade education, training and research in fields of technical education, and to create entrepreneurship and a conducive environment for pursuit of the technical education in close co-operation with industries.

8. The question which involves in the present appeal, is whether the respondents possessed the basic eligibility for admission to the undergraduate course as prescribed by the A.I.C.T.E. and, whether they secured the admission on the basis of forged and bogus certificates issued by a non-existent board i.e. Jharkhand State Open School, Ranchi.

9. The A.I.C.T.E. has issued guidelines for admission vide notification dated 2.7.1992 providing basic eligibility for admission to the undergraduate course. The candidate must have possessed higher secondary examination. The A.I.C.T.E. has issued Approval Process Handbook year to year prescribing eligibility criteria for admission in the four year engineering and technical course, the eligibility criteria is "10 +2 examination with Physics and Mathematics as compulsory subjects along with one of the Chemistry/Biotechnology/Biology/Technical Vocational subjects". Copy of the guidelines dated 2.7.1992 issued by the A.I.C.T.E. as well as the norms laid down in the Approval Process Handbook has been placed on record along with supplementary affidavit filed on behalf of the appellant-University on 12.12.2019. The Rules and Regulations framed by the AKTU for undergraduate courses (B. Tech, B. Pharmacy, BHMCT, BFAD) provide that the eligibility for admission to undergraduate courses in first year shall be as per guidelines of A.I.C.T.E. The Information Brochure for UPSEE-2018 issued by the AKTU has also been placed on record by the said supplementary affidavit by the appellant-University. The Information Brochure provides that the State Government has permitted 10% of the total sanctioned seats available for admission in first year in Technology/Architecture courses in private institutions affiliated to AKTU to be filled through merit of Non U.P. Domicile candidates without reservation subject to eligibility conditions given in this Information Brochure. Thus, 10% of the total sanctioned seats for admission in first year in Technology/Architecture courses in Private Institutions, affiliated to AKTU, are opened to the candidates whose parent belongs to the State other than Uttar Pradesh and has passed qualifying examination from an Institution located outside U.P. However, these seats are to be filled on the basis of UPSEE-2018 Merit.

The Information Brochure also specifically provides that if any document/declaration submitted by the candidate is found to be false at any stage, his/her admission shall be cancelled and he/she may be liable for prosecution under the law. The candidate must himself/herself ensure about his/her eligibility to appear in the Entrance Examination. If a candidate, who is not eligible to appear in the examination, does so; he/she will not have any claim whatsoever, for admission to any course through UPSEE-2018. The eligibility criteria is specifically provided in Clause-3.1(ii), which is for admission to first year of B.

Tech/B. Pharm./B.Des./MCA (Integrated), candidate must have clearly passed Intermediate Examination of U.P. Board or 10+2 level examination or its equivalent from any recognised Board/University without grace in required each compulsory subjects and one optional subject as given in clause 3.1(i) and securing minimum 45% marks (40% marks for SC/ST Category candidates) in aggregate in required three subjects.

10. The respondents secured admission in various affiliated private institutions to the University after UPSEE examination and counselling got over under the management quota on the basis of the forged and false (10+2) standard certificate issued by the Jharkhand State Open School.

11. It appears that the University received complaints to the effect that the Jharkhand State Open School is a fictitious body having no authority under the law to grant education certificates to the students. A four member committee was constituted by the University to find out the authenticity of the Jharkhand State Open School, Ranchi. The committee after physical verification and information received from the Jharkhand Academic Council and its Chairman found that the Jharkhand State Open School was a bogus and fictitious organisation. The Jharkhand State Open School, Ranchi was found to be running from a bungalow and when the committee reached there, the premises was locked and no person was present there. The Additional Secretary, Secondary Education, Government of Jharkhand also told the committee members that the Jharkhand State Open School is a bogus organisation and to that effect a press release was also published in local newspaper, which was shown to the committee members. On the basis of the enquiry conducted by the four member committee, the committee was of the opinion that the Jharkhand State Open School, Ranchi was a bogus and fictitious organisation, which had no authority to conduct exams and issue certificate for Xth and XIIth standards.

12. The Council of Boards of School Education in India (for short 'COBSE') vide its letter dated 22.5.2019 written to the Vice-Chancellor of the appellant-University said that name of the Jharkhand State Open School, Ranchi did not appear in the list of member-Boards of COBSE. The AICTE vide its letter dated 11.12.2019 written to the appellant-University has specifically said that the eligibility for admission in under-graduate degree programmes (Full Time) is that the students must have passed 10+2 examination of concerned State/Central Government recognised Boards of Secondary and Senior Secondary School Education. List of recognised/affiliated Boards can be accessed from web portal of COBSE. The Government of Jharkhand had published information to the general public in the year 2018 stating therein that in the Jharkhand State, only the

Jharkhand Adhinyam Parishad, Ranchi is a Government Legal Institution, which conducts the examination for Matric and Intermediate and issues certificates. Besides the aforesaid, the Jharkhand Government has not given recognition to any other organisation such as Jharkhand Academic Open Board and Jharkhand State Open School. These boards and schools are not recognised either by the Central Government or any other institution competent to give recognition. It was said that the Jharkhand Academic Open Board and Jharkhand State Open School are giving forged certificates to the students of Matric and Intermediate, which are not valid and recognised. News item to that effect has also been placed on record.

13. When a specific query was put to the counsel for the private respondents that whether the Jharkhand State Open School is a recognised institution and if so, by which institution or the State Government it has been recognised, to which he could not give an answer.

14. Thus, the certificates issued by the Jharkhand State Open School to the respondents for 10+2 examinations, are not by a recognised Board/Institution, which is an essential eligibility condition for taking admission in the first year of four years integrated engineering course. When the private respondents did not have essential eligibility condition for taking admission into the first year of four years integrated engineering course as their certificates have been issued by a bogus and fictitious organisation, should they be permitted to continue to pursue the engineering courses in the private institutions affiliated to the University, is the question which needs to be decided in this appeal.

15. The Information Brochure specifically provides that if any document/declaration submitted by the candidate is found to be false "at any stage", his/her admission shall be cancelled and he/she may be liable for prosecution under the law. The respondents must have known the status of the Jharkhand State Open School, Ranchi as they have obtained certificates from it for 10+2 standard. It is not in dispute that the aforesaid Jharkhand State Open School is not a recognised institution and the Jharkhand State Government has specifically issued a public notice stating that the said school is a fictitious and bogus organisation and the educational certificates issued by the said school for Xth and XIIth standards are not valid and legal certificates.

16. The Supreme Court in the case of *All India Council for Technical Education Vs. Surinder Kumar Dhawan and others* (2009) 11 SCC 726 has held that the Court should keep its hands off in respect of the question of education policy or an issue involving academic matter, which is the role of the statutory expert bodies. Paragraphs 15, 16 and 32 of the said judgement, which are relevant, are extracted herein below :-

"15. The decision whether a bridge course should be permitted as a programme for enabling diploma-holders to secure engineering degree, and if permitted, what should be the norms and standards in regard to entry qualification, content of course instructions and manner of assessing the performance by examinations, are all decisions in academic matters of technical nature. AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters.

16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

32. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four-year advance diploma-holders who had passed the entry-level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one-time measure was extended for several years and was also extended to post diploma-holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination instead of the required minimum of 10+2 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education."

17. When the respondents have secured admission in engineering courses in the private institutions affiliated to the appellant-University by submitting forged eligibility certificates, can they be allowed to continue to pursue their courses after it has been found out by the University that the certificates submitted by them are not valid and genuine certificates issued by a recognised Board/Institution as mandated under the law.

18. It is trite law that fraud does not enure an equity in favour of a person, who commits fraud. For this purpose, we are not burdening the judgment citing several judgments of the Supreme Court and making the judgement verbose. In the present case, when it has been categorically established that the Jharkhand State Open School, Ranchi is a bogus and fictitious organisation, which has issued

certificates to the respondents for 10+2 standard and the certificates are not valid certificates, no equity lies in favour of the respondents and, they cannot be permitted to continue their degree courses in the private institutions affiliated to the appellant-University. The respondents knew fully well that the Jharkhand State Open School, Ranchi is not a recognised institution and it was running in a small premises. It was for the respondents to find out the status of the said Open School from where they obtained the certificate of eligibility. They obtained the certificates to secure admissions in the private institutions affiliated to the appellant-University under the management quota, but certificates are neither valid nor legal.

19. In view thereof, we are of the considered opinion that if the respondents are permitted to continue to pursue their courses, it would amount to putting premium to the fraud practice by the Jharkhand State Open School and the respondents. The Courts cannot come to rescue such students, who had secured admissions on the basis of false and illegal certificates of educational eligibility for admission. When the respondents did not have the essential eligibility for admission in engineering courses, they cannot be permitted to continue to pursue their courses, the appellant-University was well within power to cancel their admissions.

20. In the result, the special appeal is *allowed* and the judgement and order dated 6.12.2019 passed by the learned Single Judge is hereby set aside.

(**Dinesh Kumar Singh, J.**) (**Pankaj Kumar Jaiswal, J.**)

Order Date :- 10.6.2020

Rao/-