



2026:AHC-LKO:17064-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 221 of 2024

Atal Bihari Vajpayee Medical University Thru. Registrar
.....Appellant(s)

Versus

Baba Edu. Society Lko Thru. Secy. Rajesh Kumar Vajpayee and
another
.....Respondent(s)

Counsel for Appellant(s)	: Gyanendra Kumar Srivastava,
Counsel for Respondent(s)	: Ravi Prakash Mishra, Abhinav Trivedi, C.S.C.

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

(1) Heard Sri Gyanendra Kumar Srivastava, learned counsel for the appellant and Sri S.C. Mishra, learned Senior counsel for the respondents.

(2) This is an appeal by the University challenging an order dated 31.08.2024 passed by the writ court in Writ-C No.7335 of 2024 [Baba Edu. Society Lko Thru. Secy. Rajesh Kumar Vajpayee and another vs. State of U.P.]. The order impugned reads as under:-

1. Shri Gyanendra Kumar Srivastava, learned counsel for respondent University on the basis of instructions has informed this Court that for the academic sessions 2021-22,

2022-23, 2023-24 only female candidates were allotted to the petitioner-institution. He has further submitted that this year i.e., for the academic sessions 2024-25 male candidates have been allotted. He further submitted that allotting female candidates to the petitioner would amount to reservation, which is not permissible as per Section 8 in Atal Bihari Vajpayee Medical University, Uttar Pradesh Act, 2018

2. Considering the aforesaid submissions, this Court is of the considered view that since on the same set of facts and in the same legal provisions, the respondent University had allotted only female candidates to the petitioner-institution for the academic sessions 2021-22, 2022-23, 2023-24 and therefore, without there being any change of circumstances, there is no reason for the respondent University to change the pattern of allotment of students to the petitioner-institution for the academic sessions 2024-25. Accordingly, for the academic sessions 2024-25 also, the respondent University is directed to allot only female candidate to the petitioner-institution as they have been doing previously.

3. Learned counsel for respondent University prays for and is granted two weeks' time to file counter affidavit.

4. Rejoinder affidavit, if any, may be filed within one week thereafter.

5. List this case on 4.10.2024.

(3) By our order dated 14.11.2025, we had stayed the impugned order and the same reads as under:-

We have heard Shri Gyanendra Kumar Srivastava, learned counsel for the appellant, Shri Ravi Prakash Mishra and Shri Abhinav Tripathi, learned counsel for the respondent nos.1 and 2.

We have perused the earlier order passed in this appeal. Shri Ravi Prakash Mishra, learned counsel appearing for the respondents states that Shri S.C.Mishra, learned Senior Advocate is to argue the matter, he is not available today. This matter is being listed repeatedly.

Learned counsel for the appellant presses urgency for various reasons mentioned in the appeal, one of which is that after counselling and admitting 21 male students, now in view of the impugned order, the respondent institution is bent upon admitting only female students. As per learned counsel for the applicant, the University cannot discriminate on the basis of gender. The said impugned order has been passed

without calling for any counter affidavit on the first day itself. Final relief has been granted at the interim stage.

We accordingly, stay the impugned order dated 31.8.2024 passed in Writ C.No.7335 of 2024. The institution shall admit the students as per the counselling already held, subject to further orders.

We wanted to hear the matter finally but on account of non availability of the counsel as it is not possible and we find prima facie that such an order could not be passed on the first day, we have accordingly passed this interim order.

List this case on 2.12.2025, as prayed by Shri Ravi Prakash Mishra, learned counsel for respondents.

(4) An inspection was conducted by the University and the result thereof has been mentioned in an affidavit filed in September, 2024 which is on record.

(5) The respondent-Institution was earlier affiliated with Ram Manohar Lohia Faizabad University for the purposes of running a college of nursing. It is claimed that ever since its inspection, the college has been admitting only female students as per the resolution passed by the society running the institution and it does not have hostel facilities for male students, therefore, the appellant-University cannot insist on admission of male students for academic session 2024-25.

(6) The Atal Bihari Vajpayee Medical University U.P. Act 2018 (hereinafter referred to as 'the Act, 2018') came into force on 22.12.2018. As per Section 7 thereof on and from the appointed date, all colleges and institutions of medical sciences previously admitted to the privileges of or affiliated to the King George's Medical University, Lucknow or the Uttar Pradesh University of Medical Sciences, Saifai, Etawah or Shakuntala Misra National Rehabilitation University or any State University constituted under the Uttar Pradesh State Universities Act, 1973 shall be deemed to be admitted to the privileges or affiliated to the Atal Bihari University which was

established by the said Act, 2018. Therefore, the respondent-Institution is deemed to have been affiliated with Atal Bihari Vajpayee Medical University-the appellant herein ever since coming into force of the Act, 2018.

(7) It is claimed by the respondent-Institution that even after the said deemed affiliation, for four years i.e. from 2021 onwards only female students were admitted. However, for the academic session 2024-2025 for the first time the University asked the respondent-Institution to admit male students also which could not have done for reasons aforesaid.

(8) The contention of learned counsel for the appellant before us is that in view of Section 8 of the Act, 2018, the University shall be open to all persons irrespective of race, class, creed or **sex** provided that the University may- (i) restrict the eligibility of admission to the courses of study of the University; (ii) make reservations in favour of the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, women students and other categories in accordance with any law or orders of the Government for the time being in force. The submission is that there is no such order of the University under Section 8 of the Act, 2018 which permits hundred percent reservation for female students in the matter of admission to nursing course being run by the respondent-Institution which is the subject matter of this appeal, as such respondent-Institution cannot say that it will admit only female students.

(9) The process of counseling, as informed by the appellant, took place in May-June and thereafter in August, the respondent-Institution filed the above mentioned writ petition seeking a writ of mandamus to the appellant not to insist on admitting male students. The appellant's case is that

by then the male students had already appeared in the counseling and opted for the respondent-Institution. The admission had already taken place and fee had been deposited. Be that as it may, thereafter, i.e. on 31.08.2024, without even hearing the admitted students and without impleading them as an opposite party, an interim order was passed merely on the basis of past practice as referred hereinabove without considering the purport, import and impact of Section 8 of the Act, 2018, by the said interim order, final relief was granted.

(10) It is in the aforesaid circumstances that we passed the interim order as already quoted hereinabove. Now, the fact of the matter is that after passing of the aforesaid interim order, 21 male students who had been admitted are pursuing their studies and have completed almost two years of study out of the total four years' course.

(11) During course of argument, learned counsel for the appellant has also invited our attention to Section 25 of the Act, 2018 which refers to an admission committee especially sub-Section 3 thereof, according to which, subject to the superintendence of the Academic Council and to the provisions of sub-section (5), the Admission Committee shall lay down the principles or norms governing the policy of admission for various courses of studies in the University. He also invited our attention to Section 25(4) and in this context referred to a resolution of the Admission Committee dated 29.05.2024 pertaining to academic session 2024-2025 to content that even as per the said resolution, the respondent-institution does not have any right to admit only female students in the nursing course for which it is deemed to be affiliated with the University.

(12) On the other hand, learned counsel for the respondent-institution referred to Section 25(5), according to which, notwithstanding anything to the contrary contained in any other provision of the said Act, 2018, reservation of seats for admission in any course of study in the University and affiliated colleges (excluding the minority institutions) for the students belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes of Citizens, Female students, Differently-abled students and other categories in accordance with any law or orders may be made and regulated by such orders as the Government may, make in that behalf.

(13) He invited our attention to an order passed by the High Court in Writ-C No.5979 of 2025 on 15.07.2025 as modified on 17.07.2025 which pertained to academic session 2025-2026, and contended that on this representation, the State Government has passed an order on 24.07.2025 wherein after noticing the orders passed in Writ-C No.5979 of 2025 pertaining to academic session 2025-26 as also the orders passed in Writ-C No.7335 of 2024 and in this appeal bearing SPLA No.221 of 2024, it has opined that there is no change in the situation as regards operation of orders of the Court, therefore, the University should itself ensure proper action with regard to allotment of seats for female candidates to the respondent-institution. This order pertains to year 2025-26 with which we are not concerned in this appeal.

(14) This appeal arises out of a writ petition which pertains only to the year 2024-2025 and not to the subsequent years. However, the issue remains as to whether the respondent-institution is entitled to admit only female students to the nursing course in question for which it is affiliated with the appellant-University.

(15) On being asked to demonstrate any order passed by the University whether referable to Section 8 or otherwise which may permit the respondent-institution to admit only female students even if for the subsequent academic session i.e. 2025-26, no such orders could be placed. In fact what we find is that there is neither any order of University referable to Section 8 wherein admission to the nursing course in question may have been restricted only to female students, meaning thereby, hundred percent admission may have been provided to the female students in the respondent-institution nor do we find any such order of the State Government under sub-Section 5 of Section 25 of the Act, 2018 providing 100 % reservation for female students. Admissions to the academic session 2024-25 are already over. The respondent-institution has admitted 21 male students who are not residing in the campus for the reason as claimed by the respondent-institution adequate hostel facilities are not available for male students, therefore, they are residing outside the campus and are studying without any demur. For the year 2025-26 which in fact is not an issue in this appeal also, it is not in dispute that male students have been admitted by the respondent-institution and they are also studying. Academic session 2025-26 is also over.

(16) In this context, Sri S.C. Mishra, learned Standing Counsel relied upon Indian Nursing Council (Revised Regulation and Curriculum For B.Sc (Nursing) Program), Regulations, 2020 (in short 'the Regulations, 2020') and under the heading Hostel Block, adequate hostel/ residential accommodation for students and staff should be available in addition to the mentioned built-up area of the nursing college. He emphasized upon a note to the heading Hostel Block of

the Regulations, according to which, minimum provision of hostel accommodation for 30% of the total student's intake is compulsory for the institution. Reliance was placed on the aforesaid provision to contend that there are no hostel facilities for male students and for this reason, they cannot be compelled to admit male students.

(17) In this context, on being asked, it has been informed that for the academic session 2024-2025, out of the a total of 139 students in the nursing course, 60 female students are residing in the hostel and others are residing outside the campus and all 21 male students are residing outside the campus and for the academic session 2025-26, out of total 140, 80 female students are residing in the hostel, others are residing outside and all 23 male students are residing outside the premises. Therefore, the condition mentioned in the Regulations, 2020 referred above are satisfied. There is no such stipulation in the Regulations that all students admitted to the Nursing Course should be residing in the hostel within the campus and none has been shown to us.

(18) In fact, Sri Gyanendra Kumar Srivastava, learned counsel for the appellant submitted that it is not compulsory that every student admitted to the nursing course should necessarily be provided hostel facilities. In fact, even many girls, admittedly, while pursuing the nursing course are living outside the campus, therefore, hostel facilities cannot be a basis for claiming hundred percent reservation for female students.

(19) We have perused the order of affiliation pertaining to the respondent with the earlier University at Faizabad prior to 2018 and do not find any condition therein that such

affiliation had been granted only for female students in the nursing course though Sri S.C. Mishra, learned Senior Advocate says that it was permitted by the earlier University to admit the new students subsequent to affiliation. Subsequently, the Act, 2018 has come into force as such the issue raised has to be seen in the light of its provisions.

(20) As already stated hereinabove, there is no order of the University referable to Section 8 or of State Government referable to Section 25(5) which may permit hundred percent reservation in the matter of admission to the nursing courses to the female students which is the issue involved herein. Whether any such order could at all be passed is a question which we do not want to enter into in these proceedings which pertains only to the year 2024-25. This issue is open for consideration by the University or the State Government under the relevant provisions of the Act, 2018 as and when the occasion arises. If the respondent-institution can maintain an application referable to the said provisions either before the University or before the State Government, it shall also be open for it to do the same which can always be considered as per law but, so far as these proceedings are concerned, in the absence of any order of the University or of the State Government pertaining to the academic session 2024-2025 restricting admission to the nursing course in question entirely for the female students or permitting hundred percent reservation for them in the said matter, we do not see as to how learned Single Judge could have, at the interim stage, granted final relief of such a nature without even referring to relevant provisions of the Act, 2018. In ordinary course, we would have relegated the matter back to learned Single Judge for a decision afresh, but considering the fact that admissions

have already been made to the academic session 2024-2025 and the factual and legal scenario as discussed hereinabove, we see no reason to do so, rather we **dispose of** the writ petition and this special appeal in terms of what has been stated hereinabove. The University or the State Government are at liberty to take any decision in terms of Section 8 or Section 25(5) of the Act, 2018 and if application is filed by the respondent-College which is otherwise maintainable it shall be considered as per law keeping in mind that admission process for the new academic session 2026-27 is to start very soon.

(Abdhesh Kumar Chaudhary,J.) (Rajan Roy,J.)

March 09, 2026

Shanu/-