

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 2nd November, 2010.

+ W.P.(C) No.4636/2010 & CM No.9173/2010 (for interim relief)

% RAJNI SHARMA PETITIONER
Through: Mr. Rajnish Kumar, Advocate

Versus

UNION OF INDIA & ORS RESPONDENTS
Through: Mr. Bipin K. Dwivedi, Adv. for R-2.
Mr. Amrit Paul, Adv. for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the decision of the respondent no.3 Guru Nanak Dev University (GNDU), Amritsar, Punjab cancelling the admission of the petitioner to the Master of Business Economics (MBE) course in the respondent no.2 New Delhi Institute of Management, New Delhi affiliated to the respondent no.3 GNDU. The petitioner also seeks a direction to the respondent no.2 Institute and the respondent no.3 GNDU to allow her to pursue the course.

2. The petitioner filed this writ petition pleading that she had pursued the Bachelor of Business Administration (BBA) course of the respondent no.4 Jamia Hamdard University, New Delhi; that the said BBA is equivalent to graduation; that she completed her BBA in the year 2008 in first division and took the Management Aptitude Test (MAT) which only Graduates from a recognized University could take and got the invitation from the respondent no.2 Institute for admission to Master of Business Administration (MBA) course; that however on approaching the respondent no.2 Institute she was counseled to do the MBE course for which the respondent no.2 Institute was affiliated with GNDU, instead of MBA course; that the eligibility for admission to the MBE course offered by GNDU through the respondent no.2 Institute was graduation in any stream with at least 50% marks in aggregate; that on the said representations of the respondent no.2 Institute, she took admission in the MBE course and made payment of ₹1,45,000/- being the fee for two semesters of six months each as demanded. It is the case of the petitioner that at the time of admission in the respondent no.2 Institute, she submitted all the certificates/documents for verification as demanded. The said MBE course commenced in August 2009 and the petitioner claims to have appeared in the first semester end term examination held in November/December 2009. While the result of the said examination was awaited, the second semester classes were commenced and which also the petitioner claims to have attended from January, 2010 till April 2010. The petitioner expresses shock on learning of

the communication dated 7th April, 2010 of GNDU to the respondent no.2 Institute to the effect that the Graduation Degree of the petitioner was not recognized by GNDU and hence the admission of the petitioner was cancelled.

3. The representations of the petitioner having not met with any success, the present writ petition was filed which came up before this Court first on 15th July, 2010. Finding no explanation as to why the petitioner was admitted, fee of ₹1,45,000/- was received, roll number allotted for the first semester end term examination and allowed to attend classes of the second semester if not eligible for admission to the course, notice of the writ petition was issued.

4. Counter affidavits have been filed by the respondent no.2 Institute, GNDU as well as by the respondent no.4 Jamia Hamdard University.

5. The counsel for the petitioner besides the aforesaid has argued that as per the documents produced by GNDU, the Equivalence Committee of the GNDU in its meeting held on 29th March, 2010 only has taken a decision that the BBA Degree through Distance Education from Jamia Hamdard University, New Delhi obtained by the petitioner, was not recognized as equivalent to BBA Degree of the GNDU. It is contended that the said decision of 29th March, 2010 cannot affect the petitioner who was admitted

much prior thereto in August 2009.

6. The counsel for the respondent no.4 Jamia Hamdard University has supported the petitioner and has invited attention to the eligibility criteria of respondent no.3 GNDU for various courses of study and where for the MBE course, the criteria laid down is Bachelor's Degree with 50% marks in aggregate or equivalent examination. Attention is also invited to the eligibility criteria for Master of Science (M.Sc.) in the Faculty of Life Science where the eligibility criteria prescribed is Bachelor of Science (B.Sc.) Degree from GNDU or any other examination recognized equivalent thereto by respondent no.3 GNDU. It is contended that for the purposes of the MBE course, the only criteria is a Bachelor's Degree, not necessarily from GNDU and not required to be equivalent to the Bachelor's Degree of GNDU. It is contended that the BBA Degree of respondent no.4 Jamia Hamdard University's Distance Learning, is a Bachelor's Degree which fits into the scheme of 10+2+3 of education. Attention is also invited to the eligibility prescribed by respondent no.3 GNDU for Bachelor of Law (LLB) course where Open Universities and Distance Learning Courses are expressly excluded. It is contended that there is no such exclusion while laying down the criteria for MBE course.

7. The counsel for GNDU has at the outset contended that it is not as if the petitioner had any reason to be shocked in April 2010 as pleaded. It is

contended that as soon as the respondent no.2 Institute forwarded the certificates/documents of the petitioner for the purposes of issuance of a roll number for the first semester end term examination, a doubt was raised as to the eligibility of the petitioner and the petitioner was not being issued the roll number; however the petitioner furnished an affidavit dated 16th November, 2009 disclosing knowledge that verification of her eligibility for admission to the course was still pending and that in the event of being permitted to take the examinations scheduled in November/December 2009, she would take the said examinations at her own risk and will be responsible for consequences thereof and the roll number to be issued to her was to be provisional. The petitioner in the affidavit further expressly agreed that if the certificates/documents submitted by her are rejected at the stage of equivalency, her admission may be cancelled and she will have no claim against the University. The petitioner has not controverted having submitted the said affidavit.

8. In my view, the petitioner is not entitled to the relief claimed for the reason alone of having not disclosed before this Court about furnishing the said affidavit and for the reason of concealing the same. The law that a litigant, particularly in an equitable jurisdiction ought to make a full disclosure and can be disentitled to the relief if found to have practiced concealment, need not be restated. The petitioner in the present case concealed the undertaking/affidavit aforesaid and rather built up a case

inconsistent therewith. There was no reason for the petitioner to be shocked in April 2010 since she was well aware that her eligibility was under consideration.

9. It thus transpires that the petitioner within a couple of months of her admission to the respondent no.2 Institute, was aware of the doubts raised by GNDU as to her eligibility for admission and chose to take a chance and pursue the course, rather than leaving the same. Though the petitioner has pleaded about having cleared MAT and having initially approached the respondent no.2 Institute for admission to MBA course but the details/particulars with respect thereto are not available.

10. GNDU in its counter affidavit itself has referred to ***A.P. Christians Medical Educational Society vs. Government of Andhra Pradesh*** (1986) 2 SCC 667 laying down that the Court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the Regulations made by the University itself –that would be destructive of rule of law. Reference is also made to ***Mahatma Gandhi University Vs. Gis Jose*** (2009) 1 RSJ 438 (Supreme Court) to contend that the petitioner cannot be shown any sympathy or given benefit of the illegality committed by the Institute in making wrong and illegal admission. Reliance is also placed on ***Regional Officer, C.B.S.E. Vs. Ku. Seena Peethambaran*** (2003) 4 RSJ 566 (Supreme Court) to contend that the petitioner in view of her affidavit is estopped from

claiming any relief qua the University.

11. The counsel for GNDU during the course of hearing has also referred to *Poonam Mohindru Vs. Thapar Institute of Engineering and Technology, Patiala* (2003) 4 RSJ 535 where a Division Bench of the Punjab and Haryana High Court held that the High Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India is not to embark upon an enquiry to determine the equivalence of Degree and which subject clearly is the domain of the Expert Body.

12. The counsel for the petitioner has relied on *Punjab University, Chandigarh Vs. Devjani Chakrabarti* (1984) 3 SCC 612 regarding prospectivity of the administrative decisions. However I do not find the said question arising in the present case. The decision dated 29th March, 2009 of the Equivalence Committee of the respondent no.3 GNDU is in pursuance to the doubt already expressed immediately upon receipt of certificates/documents of the petitioner as to her eligibility. It is not as if on 29th March, 2010, it was for the first time held that the Distance Learning BBA Programme of the respondent no.4 Jamia Hamdard University will not be recognized.

13. Though the counsel for GNDU and counsel for the respondent no.4 Jamia Hamdard University raised several arguments as to whether the matter

was required to be referred to the Equivalence Committee or not with Jamia Hamdard University contending that in view of the language of the eligibility criteria it was not and GNDU contending otherwise but the present case is not an *inter se* litigation between two Universities. If they have any *inter se* issues as to the recognition of each other's courses, this is not the forum therefor. The experts of the University having taken a decision, scope of interference by this Court therewith is limited. In view of concealment practice by the petitioner, need is not felt to delve into the matter any further.

14. The fact however remains that the respondent no.2 Institute, perhaps in a zeal to admit students, did not scrutinize the certificates/documents of the petitioner and showed haste in admitting the petitioner and receiving the fee of two semesters, several months prior to the commencement of the course. Even though the petitioner attended classes for approximately two semesters but to no benefit/avail. The petitioner was attending classes in the hope of picking up a qualification and which has not happened. The respondent no.2 Institute cannot be allowed to retain the fee collected from the petitioner. It was the duty of the respondent no.2 Institute, an affiliate of GNDU to guide students properly and to admit only those who were eligible. The respondent no.2 Institute in the manner aforesaid has undoubtedly wasted at least a year of the petitioner's life. Without going into the question of whether the respondent no.2 Institute is liable to

compensate the petitioner therefor, the respondent no.2 Institute is in any case liable to refund the fee of ₹1,45,000/- collected from the petitioner together with interest at the rate of 10% per annum from the date the fee was received and till the date of refund.

15. Thus while holding the petitioner not entitled to the relief claimed, the respondent no.2 Institute is directed to refund the amount of ₹1,45,000/- aforesaid within four weeks of today. If the amounts are not so refunded, the respondent no.2 Institute after four weeks, besides other liabilities for non-compliance of orders of this Court, shall be liable for interest at the rate of 12% per annum. The petitioner is also awarded costs of these proceedings of ₹20,000/- against the respondent no.2 Institute payable along with the amounts aforesaid.

The petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

2nd November, 2010/bs

(Corrected and released on 7th December, 2010)