

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

Date of decision: 17th September, 2010.

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W.P.(C) No.6153/2010

JYOTI GOSWAMI

..... PETITIONER

Through: Mr. Sundeep Kumar Mridula, Advocate

Versus

UNION OF INDIA & ORS

..... RESPONDENTS

Through: Mr. Mohinder J.S. Rupal & Ms.
Sonam Gupta, Advocates 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? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner had applied to the respondent no.2 Pt. Deen Dayal Upadhyaya Institute for the Physically Handicapped, affiliated to the respondent no.3 University of Delhi for admission in Bachelor in Occupational Therapy (BOT) course. The petitioner appeared in the entrance examination held on 13th June, 2010 and being successful therein was provisionally admitted on 12th August, 2010. The petitioner deposited the requisite fee, but not finding her name in the list of students admitted, approached the respondents when she was told that her admission was still under process. The respondents ultimately refused admission to the petitioner on the ground of being ineligible for admission.

2. The minimum eligibility conditions for admission as prescribed in the prospectus issued by the respondent no.2 Institute for admission for the academic year 2010-11 as contained in Clause 3 thereof is as under:

“3. MINIMUM ELIGIBILITY CONDITIONS

3.1 **Qualification** – Candidates seeking admission to the 1st Year of BPT, BOT and BPO must have passed one of the following examinations.

(a) Senior School Certificate Examination of the Central Board of Secondary Education (12th standard of 10+2system) or an examination recognized as equivalent thereto with Physics, Chemistry, Biology and English (PCBE) for BPT/BOT,

or

(b) Physics, Chemistry, Mathematics/Biology and English (PCME/PCBE) for BPO., provided the student has passed in each subject separately.

or

(c) Indian School Certificate Examination of the Council for the Indian School Certificate Examination or equivalent with PCBE for BPT/BOT and PCBE/PCME for BPO.

or

(d) Intermediate / Pre-medical Examination or equivalent with PCBE for BPT / BOT and PCBE / PCME for BPO

(e) The candidates who have passed one of the above examinations with PCME are eligible for BPO course only.

3.2 **Percentage of Marks** – The candidate should have a minimum of 50% marks in aggregate in above mentioned four subjects for general category and 45% for SC/ST/PH/CWAPP categories each.”

3. The Institute besides the BOT course also runs courses in Bachelor in Physiotherapy (BPT) and Bachelor in Prosthetics & Orthotics (BPO).

4. The contention of the petitioner is that she had cleared her Senior School Certificate Examination of the Central Board of Secondary

Education (12th standard of 10+2 system) with over 50% marks in aggregate and was thus eligible for admission. According to the petitioner, for admission to BOT course, a candidate is required to be having passed either of the following:

- (i) SSC examination of CBSE or
- (ii) An examination recognized as equivalent thereto with Physics, Chemistry, Biology and English.

5. The petitioner in her CBSE examination had appeared in six subjects i.e. English (core), Hindi (elective), Chemistry, Biology, Physical Education & Physics. The petitioner as per the rules of CBSE was required to take marks in best of five out of six subjects, for passing. The petitioner had got “E” grade in the subject of Physics which according to the 9 point scale is equivalent to “fail” in the subject of Physics. However, since in other five subjects she had passed, her overall result was “pass”.

6. The respondents held the petitioner ineligible for the reason of having failed in the essential subject of Physics. According to the respondents, to be eligible for admission, a candidate must have cleared all the four essential subjects of Physics, Chemistry, Biology & English and the petitioner having failed in Physics is ineligible.

7. The counsel for the petitioner rejoins by contending that it is nowhere so provided in the prospectus. It is argued that wherever the respondents require the applicants for a course to pass in each subject separately, it has been so provided. Reliance is placed on Clause 3.1(b) (supra) of the prospectus where for the purpose of admission to BPO course, it has been expressly provided that “the student has passed in each subject separately”. It is further contended that even if aggregate of four subjects i.e. Physics,

Chemistry, Biology and English as required by Clause 3.2 is to be taken, the same notwithstanding the petitioner having failed in Physics is above 50% for the reason of the petitioner securing high marks in the subject of English.

8. The language of the prospectus laying down the eligibility conditions is definitely defective. From a literal interpretation of the same, the contention of the petitioner has to be accepted. While prescribing in Clause 3.1(a), the only requirement is of Senior School Certificate Examination of CBSE, it does not provide that the said examination should be in a stream having Physics, Chemistry, Biology and English as prescribed for an equivalent examination. Going purely by the language, a student even with the Commerce or Humanities stream in SSC examination of CBSE would be eligible for admission.

9. The counsel for the respondents has argued that the proviso after Clause 3.1(b) applies to both Clause 3.1(a) & 3.1(b) and the requirement is of student passing in each subject separately. However, the same is also not borne out from the prospectus. Had the proviso been intended for both Sub Clause (a) & (b), it would not have been attached to Sub Clause (b) only and would have formed a separate paragraph by itself.

10. However, the prospectuses are not drafted by experts and are not to be interpreted as statutes or contract. This Court has to be guided by the course in which admission is sought and the requirement thereof. It is abundantly clear not only from Clause 3.1. aforesaid but also from Clause 4 of the prospectus which prescribes for admission test to be in the subject of Physics, Chemistry, Biology / Mathematics, General Knowledge and English that the proficiency required for admission in the BOT course is in the subjects of Physics, Chemistry, Biology & English. If it had not been

so, the examinations recognized as equivalent to Senior School Certificate Examination of CBSE would not have been required to have been passed with Physics, Chemistry, Biology and English as subjects. It cannot be that while those clearing the SSC examination of CBSE could clear it in any stream and those clearing other equivalent examination were required to have the aforesaid four subjects.

11. Similarly, the proviso is found to be for the purposes as contended by the counsel for the respondent though placed defectively. There is a similar defect in Clause 3.2 which provides only for 50% marks in the four subjects without further specifying that the candidate should have passed in each of the subjects.

12. While not accepting the contention of the petitioner, the respondents to avoid confusion are however directed to rectify the defect in the prospectus for the next academic year.

13. The counsel for the petitioner taking a cue from the same contends that owing to the mistake of the respondent no.2 Institute, the petitioner would waste an academic year; that she did not seek admission elsewhere content with the provisional admission granted by the respondent no.2 Institute and on a reading of the prospectus finding herself eligible for the course.

14. Though the sympathy of this Court is with the petitioner but the petitioner cannot be admitted to a course for which she has not been found eligible, on sympathetic grounds or by invoking the provision of estoppel as contended by the counsel for the petitioner. There is no estoppel contrary to the Rules. In the present case, the eligibility conditions prescribed in the prospectus are in the nature of Rules and the petitioner if found ineligible

cannot be admitted for the reason of the mistake of the respondents.

There is no merit in the petition. The same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

17th September, 2010
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