

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

Date of decision: 23th November, 2010.

+
%

W.P.(C) No.12475/2009

ADITYA N. PRASAD

..... PETITIONER

Through: Mr. Rajiv Dutta, Sr. Advocate with
Mr. Rahul Sharma, Advocate

Versus

THE UNIVERSITY OF DELHI & ORS.

..... RESPONDENTS

Through: Ms. Manisha & Mr. Amit Bansal,
Advocates for R-1 & R-3.
Mr. Pawan Kumar Aggarwal, Advocate
for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|----|
| 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 petitioner was a student of the B.A.(Hons.)-History in respondent No.2 Hans Raj College in the academic session 2006-2009. The petitioner while taking his final/third year examination also appeared in the All India Law entrance examination for admission to the respondent no.3 Faculty of Law, University of Delhi and secured 729th rank in the All India Merit List prepared of the result of the said examination and accordingly provisionally admitted to the LLB course for the academic session 2009-2010 in the

Campus Law Centre, University of Delhi, subject to submission of documents including those relating to eligibility. One of the conditions for eligibility for admission to the LLB course was 50% marks in graduation. The petitioner however secured only 48.63% marks. According to the petitioner, there was an error on the part of the respondent No.2 College in computing the internal assessment marks and started marking representations therefor but without any success. For the said reason, the petitioner could not deposit the documents regarding his eligibility by the last date prescribed for submission of the same with the Campus Law Centre and owing whereunto the provisional admission of the petitioner to LLB course was threatened to be cancelled.

2. The petitioner then preferred this writ petition and this Court vide order dated 15th October, 2009 while issuing notice of the petition restrained cancellation of the provisional admission of the petitioner. Subsequently, vide orders dated 20th November, 2009 & 24th November, 2009, the Campus Law Centre was directed to permit the petitioner to take the first semester end term examination of the LLB course.

3. Counter affidavits were filed by the respondent No.1 University and by the respondent No.2 College and to which rejoinders have been filed. The counsels have been heard.

4. During the hearing, it was informed that the petitioner since then attended the second semester classes and took the second semester end term examination of the LLB course and promoted to and is now pursuing the third term (second year out of the three years course) of the LLB course and which also is now nearly complete. The petitioner has thus under the interim orders in this petition already completed half of the LLB course. Of course, the interim orders were subject to the final decision of the petition and further provided that the same will not create any equities in favour of the petitioner.

5. The petitioner along with his rejoinder to the counter affidavit of the Campus Law Centre has filed a reply dated 12th March, 2010 of the respondent No.2 College to an RTI query. In the said reply, the respondent No.2 College admitted that the teachers are supposed to give internal assessment on the basis of actual attendance in the class; that in the case of the petitioner while computing internal assessment of the year, benefit of attendance was not granted to the petitioner due to oversight and inadvertence. The respondent No.2 College however clarified that before sending the internal assessment marks to the respondent No.1 University, the same are displayed on the respondent No.2 College's notice board for the purpose of inviting objections thereto; that the petitioner did not file any objections to the benefit of attendance having not been granted to him.

6. The counsel for the respondent No.2 College during the hearing on 8th September, 2010 admitted that the petitioner was short of twelve marks to achieve the 50% mark and was entitled to eight marks on account of attendance. The contention of the respondent No.2 College however is that the petitioner was required to point out the mistakes in computation of internal assessment when the same was displayed on the notice board and having failed to do the same, was now not entitled to have the said eight marks computed in his internal assessment.

7. Ordinance VIII (E) of the respondent No.1 University of which respondent No.2 College is an affiliate, governs the Internal Assessment. There is no provision in the said Ordinance for waiver by not objecting at the relevant time. The responsibility for internal assessment is of the College and once the College has admitted the mistake, I see no reason why the petitioner should be deprived of the marks to which he is entitled to and especially in the facts and circumstances aforesaid. I therefore find that the petitioner is entitled to the said eight marks and direct the respondent No.2 College to amend the internal assessment marks of the petitioner accordingly and to communicate the same to the respondent No.1 University for the University to revise / amend the result of the petitioner.

8. The addition of the eight marks aforesaid would take the percentage of the petitioner to 49.63% only and still leave the petitioner with a deficit of

4 marks from attaining the eligibility criteria of 50% for admission to LLB course.

9. It is also the contention of the petitioner that the respondent No.2 College while computing the internal assessment of the petitioner has also not taken into account the marks of one of the assignments submitted by the petitioner. The petitioner along with this petition has filed a copy of the said assignment sheet in which 6½ marks out of 10 were given to the petitioner. Original of the said assignment sheet was produced in the Court at the time of hearing on 8th September, 2010. The respondent No.2 College confirms the practice of returning the marked / checked assessment sheets to the students. However, the assignment sheet so produced was unsigned though appeared to be having some corrections and 6½ marks out of 10 marks. The said original assignment sheet was on 8th September, 2010 handed over to the counsel for the respondent No.2 College to enable him to have it verified from the teacher concerned whether the correction and the marks appearing on the same were in the hand writing of the concerned teacher or not.

10. The respondent No.2 College has filed an additional affidavit confirming that the corrections on the said assignment sheet and the 6½ marks out of 10 marks thereon are in her hand. It is however stated that the petitioner did not submit the assignment by 30th September, 2008 as required and towards the last week of October, 2008 i.e. after the first term of the

third year of under graduation, had approached the teacher with the assignment; that upon the teacher refusing to accept the same, the petitioner requested the teacher to evaluate the assignment, if not for the purpose of internal assessment, at least for evaluating his performance; the teacher explains the marks and the corrections to the said circumstances.

11. The petitioner has today in Court handed over a rejoinder to the aforesaid affidavit of the teacher. However, the senior counsel for the petitioner has without going into the said rejoinder contended that the petitioner does not want to join issues with his erstwhile teacher or to dispute the version of the teacher but contends that there is no requirement for submission of the assignment by 30th September and even if there is any such provision, the assignment admittedly submitted after three weeks only ought to be considered. Needless to state that if the 6½ marks admittedly given by the teacher to the said assignment are to be counted in the internal assessment, the petitioner would achieve the magical eligibility percentage of 50% in his graduation and which would validate his admission to LLB.

12. During the hearing attention of the counsels was invited to the judgment dated 9th February, 2010 of this Court in WP(C) No.2877/2003 titled ***Dr. Ravinder Singh Vs. Medical Council of India*** on the concept of rounding off. It was enquired as to whether the 49.63% marks of the petitioner even without the assignment aforesaid could not be rounded off to

50%. This Court in the judgment aforesaid after considering the judgment of the Supreme Court and several judgments of the other High Courts had considered the 49.7% marks obtained by the petitioner in that case as equivalent to 50% by applying the principle of rounding off.

13. The counsel for the respondent No.1 University has however invited attention to the prospectus for admission to LLB course which provides under the Chapter of Eligibility that rounding off a fraction of marks is not allowed. After hearing, the counsel for the respondent No.1 University has also handed over copy of the judgment dated 23rd March, 2010 also of this Court in WP(C) No.1945/2010 titled ***Kumari Anamika Vs. The Principal, Daulat Ram College (W)*** in which rounding off was not allowed. The earlier judgment in ***Dr. Ravinder Singh*** (supra) was however not noticed.

14. A perusal of the judgment in ***Dr. Ravinder Singh*** case does not show that there was any bar / prohibition therein to rounding off as has been pointed out in the prospectus in the present case. The question which thus arises is whether in the face of an express prohibition, the principle of rounding off would still apply.

15. As far as the judgment in ***Kumari Anamika*** (supra) is concerned, the same in my opinion is distinguishable. The said judgment relates to admission to MA (English) course. The petitioner therein filled up the

percentage secured by her in BA (Hon.) English as 45% though she had only 44.7%. The prospectus in that case also contained a provision as in the present case prohibiting rounding off. The Court was thus guided by the misrepresentation in the admission form by the petitioner. There is no such misrepresentation in the present case. Yet another factor which prevailed with this Court in ***Kumari Anamika*** case was that there might be a large number of candidates who might have secured same marks as the petitioner in that case i.e. 44.7% or between 44.7% and 50% who had been denied admission. The said reasoning is also not applicable in the present case. The criteria for admission to LLB course was not the marks obtained in graduation but the rank in the entrance examination held therefor; 50% in graduation was merely the eligibility. Thus even if anybody else has 49.63% marks as the petitioner, or between 49.63% and 50%, he would still not be eligible for admission to LLB since the petitioner has secured the admission on the basis of his rank in the result of the entrance examination. Moreover, the possibility of any other candidate occupying the seat even if vacated by the petitioner now, does not arise.

16. This Court in ***Kumari Anamika*** case distinguished the Supreme Court judgment relied upon in ***Dr. Ravinder Singh*** case for the reason of the same dealing with the reservation of posts and not admission to College.

17. I however find that the Supreme Court in ***Selin Mary Mammen Vs. Mahatma Gandhi University*** 2008 (17) SCC 615 also applied the principle

of rounding off to the case of admission and inspite of the prohibition against rounding off contained in the Rules. Of course the same was paraphrased having been done in exercise of jurisdiction under Article 142 of the Constitution of India and in the totality of the facts and circumstances of that case and without creating a precedent for other cases. However, the Apex Court in *State of West Bengal Vs. The Committee for Protection of Democratic Rights* 2010 (3) SCC 571 held that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs but to enable the High Courts to reach injustice wherever it is found and to mould the relief to meet the peculiar and complicated requirements of this Country. Similarly, in *B.C. Chaturvedi Vs. Union of India* 1995 (6) SCC 749, it was held that the mere fact that there is no provision parallel to Article 142 relating to the High Courts can be no ground to hold that the High Courts have not to do complete justice and if moulding of relief would do complete justice between the parties, the same cannot be ordered. To the same effect are the judgments in *Food Corporation of India Vs. S.N. Nagarkar* (2002) 2 SCC 475 & *ESI Corporation Vs. Jardine Henderson Staff Association*. Mention may also be made of *A. Sudha Vs. University of Mysore* 1987 (4) SCC 537 where even though the candidate was held not eligible for admission to MBBS course but finding the candidate to have been justified in relying upon the information supplied by the Principal of the Institute and

holding that the students ought not be penalized, was allowed to continue pursuing the MBBS course.

18. In the entirety of the facts of the aforesaid case, particularly the 6½ marks admittedly given by the respondent No.2 College to the petitioner in the assignment even though submitted late, I am of the opinion that the petitioner deserves to be allowed to pursue the LLB course and ought not to be set back by one and a half years from achieving his ambition.

19. It is often said about the LLB that the worst (third class) students became the best of the lawyers. Ralph Waldo Emerson, American Poet & Lecturer, said “The good lawyer is not the man who qualifies all his qualifications, but who throws himself on your part so heartily that he can get you out of a scrape.” The petitioner who by his sheer perseverance has been able to cover deficit of eight out of twelve marks, is found to have the makings of a good lawyer.

20. The petitioner therefore, whether by addition of 6½ marks of his assignment or by the application of the principle of rounding off is found entitled to meet the eligibility conditions for pursuing the LLB course.

21. However to avoid any ambiguity, it is deemed appropriate to direct the respondent No.2 College to also include the 6½ marks of the assignment

in the internal assessment of the petitioner and which would give the petitioner the requisite minimum 50% marks for admission to LLB course.

22. The petition is therefore allowed. The respondent No.2 College is directed to carry out the amendments within 10 days hereof and to forward the same to the respondent No.1 University. Resultantly, the petitioner is held entitled to continue with the LLB course.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

23rd November, 2010
'gsr'