

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

Date of decision: 11th January, 2011

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W.P.(C) No.3816/2010

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**MAHARAJA AGRASEN INSTITUTE
OF TECHNOLOGY**

..... PETITIONER

Through: Mr. Raghav Awasthi, Advocate

Versus

DIRECTOR, HIGHER EDUCATION & ORS... RESPONDENTS

Through: Ms. Zubeda Begum, Advocate for
respondents 1 & 2.

Mr. Mukul Talwar with Mr.
Sradhananda Mohapatra, Advocates
for respondent No.3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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 petition impugns the order dated 29th December, 2009 of the Committee authorized by the Lieutenant Governor of the National Capital Territory of Delhi in exercise of powers under Section 19(1) of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence) Act, 2007 for compounding an offence punishable under Section 18 of the said Act. The offence allegedly

committed by the petitioner has been compounded by imposing penalty of ₹25,00,000/- on the petitioner.

2. This Court while issuing notice of the petition, vide order dated 31st May, 2010 stayed operation of the order aforesaid subject to the petitioner depositing ₹10,00,000/- with the Registrar General of this Court and which amount has been deposited and directed to be kept in a fixed deposit.

3. The Act aforesaid, as per its Preamble was enacted to provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto. Section 3 of the said Act makes the same applicable to unaided institutions affiliated to a University imparting education in degree, diploma and certificate courses. It is not in dispute that the petitioner is an institution to which the Act is applicable. The petitioner is affiliated to the respondent No.3 Guru Gobind Singh Indraprastha University.

4. Section 18 of the said Act, of offence whereunder the petitioner is alleged to be guilty, is as under:

“18. Without prejudice to the penalty specified in any other law for the time being in force, whoever contravenes the provisions of this Act or the rules made thereunder shall, on

conviction be punishable with imprisonment for a term which may extend to three years, or, with fine which may extend to one crore rupees, or with both.”

5. Section 19(1) of the Act providing for compounding of offence is as under:

“19. (1) Any offence punishable under Section 18 may be compounded by such officer or body as may be specially authorized by the Government in this behalf, either before or after the institution of the prosecution, on payment for credit to the Government of such sum as such officer or body may impose:

Provided that such sum shall not, in any case, be less than five lakh rupees and, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded:

Provided further that in the event of charging of excessive fee by the institution than the notified fee, the amount of compounding fee shall not be less than double the amount of fee excessively charged or five lakh rupees, whichever is higher.

(2) Nothing in sub-section(1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence committed by him was compounded.

Explanation: For the purposes of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be discharged forthwith.”

6. The respondents 1&2 in the show cause notice dated 12th June, 2009 served on the petitioner prior to the order impugned in this petition alleged that the petitioner had admitted five extra candidates under different branches of B.Tech. (Lateral Entry) programme, constituting an offence under Section 18 of the Act and that a Committee had been constituted under Section 19 of the Act to compound the said offence and called upon the petitioner to show cause as to why penalty should not be imposed on it for contravening the provisions of the Act.

7. The order dated 29th December, 2009 impugned in this petition records that the Lieutenant Governor had constituted a Committee comprising of, i) Secretary, Higher Education, ii) Registrar General of the respondent No.3 University and iii) Director, Higher Education, to compound the offence committed by the petitioner under Section 18 of the Act; that the respondent No.3 University had informed that the petitioner had committed an offence by admitting five extra students over and above the sanctioned strength in B.Tech. (Lateral Entry) programme at their own; that the petitioner in reply to the show cause notice had admitted contravention of the provisions of the Act due to lack of awareness on the part of its former Director and requested for imposition of a token penalty to save the future of the students. It was further held that in terms of Section 14 of the Act, admissions made in contravention of the provisions of the Act or the Rules shall be void. After recording so, the order directs the

petitioner to deposit the penalty amount of ₹25,00,000/- with the respondents 1 &2.

8. The petitioner contends that the order fails to disclose the provisions of the Act or the Rules made thereunder under which the admission of five extra students is an offence; that the Act or the Rules do not at all cover a case where extra students have been admitted over and above the sanctioned strength; that thus no violation of any provision of the Act or the Rules has been committed by the petitioner; that no adequate reasons have been given for the imposition of the penalty; that the admission through lateral entry has been allowed by the All India Council for Technical Education (AICTE) (though not impleaded as respondent to the petition) for the first time on 12th January, 2007 and no provision in that regard had been made by the Delhi Government and thus the lateral entry to the second year is covered only by the AICTE regulations and which have not been contravened in any way by the petitioner. In the petition itself several judgments have been cited on the requirement to give reasons and on the requirement for following the principles of natural justice, though no reliance thereon was placed during the hearing.

9. At this stage, the factual matrix which is not in dispute may be noticed:

(i) The admission to the second year of B.Tech. course is

described as “lateral entry”. The said lateral entry is available for diploma holders and B.Sc. graduates. The AICTE in its Approval Process Handbook has prescribed for such lateral entry upto a maximum of 10% of the sanctioned intake. Such lateral entry has been the subject matter of *Isha Wadhwa Vs. GGSIPU* 2010(9) AD (Delhi) 668. In the said judgment, it is recorded that the provision for lateral entry exists in the admission brochure of the University which also prescribes the number of seats available in the affiliates of the University for such lateral entry.

- (ii) The petitioner vide its letter dated 18th August, 2008 informed the respondent No.3 University that it had granted provisional admission to fifteen students mentioned therein in the second year B.Tech. course through lateral entry and sought approval of the respondent No.3 University for the same. The respondent No.3 University vide its response dated 20th August, 2008 to the petitioner informed the petitioner that as per the admission brochure of the respondent No.3 University for the Session 2008-09, except for Management Quota, any admission made directly by any Institute / College will be illegal and unauthorized and the respondent No.3 University will not issue any enrollment number to any such candidate. The petitioner

was thus informed that its request could not be acceded to.

- (iii) The petitioner in its subsequent letter dated 3rd December, 2008 to the respondent No.3 University admitted that after receiving the reply dated 20th August, 2008 from the respondent No.3 University, it informed the fifteen students who were earlier provisionally admitted that they should attend the second / Open House Counselling; that out of the fifteen students, ten students attended the counselling and were admitted; however the remaining five students could not be communicated to attend the counselling. Notwithstanding the said five students having not attended the counselling, and having not been admitted by the University, the petitioner continued with them. In the letter dated 3rd December, 2008, it was explained that the then Director of the petitioner was not fully aware about the University Admission Rules and owing to lack of awareness committed the mistake and continued with the admission of the five out of the fifteen students, notwithstanding the said five students having not participated in the counselling. The petitioner thus tendered unqualified apology for the mistake committed and requested the respondent No.3 University to regularize the admission and assured the University that the mistake will not be repeated and further requested the respondent No.3 University to impose a token penalty on the

petitioner. While stating so, it was stated that the said five students “were also selected against vacant seats along with five Management Seats on 30th August, 2008.” Since by then the first semester examinations were due from 8th December, 2008, the petitioner requested the respondent No.3 University to regularize the admission to enable the said five students to appear in the examinations.

- (iv) The respondent No.3 University on 5th December, 2008 sought the views of the respondents 1 & 2 in this regard. It appears that the Director of the petitioner Institute also submitted an undertaking (which has not been filed by either of the parties). The respondents 1 & 2 vide their letter dated 5th December, 2008 to the University directed the respondent No.3 University to issue enrollment number subject to the said students furnishing an undertaking that it will not entitle them to any subsequent claim, “if offence is not compounded, admission being irregular one”. It was further directed that their result of the examination be also not declared till a final decision is taken. The respondent No.3 University accordingly vide letter dated 8th December, 2008 to the petitioner communicated to the petitioner the decision to allow the said five students to provisionally take the examination.

(v) Thereafter as aforesaid, show cause notice was issued to the petitioner. The petitioner in reply dated 6th July, 2009 to the show cause notice *inter alia* informed that there were fifteen vacant seats in the admissions made in the academic year 2008-09 due to withdrawals / cancellation and in view whereof the said fifteen students were admitted; again mistake on the part of the Director was pleaded.

10. The counsel for the petitioner has argued that in the aforesaid facts no case of contravention of provisions of the Act or the Rules constituting an offence within the meaning of Section 18 of the Act which could be compounded under section 19 of the Act is made out. It is contended that all the students admitted were within the permitted strength for admission of the petitioner Institute.

11. I am unable to agree with the contention of the counsel for the petitioner. Section 13 of the Act requires an Institution as the petitioner to make admissions through a Common Entrance Test to be conducted by the designated agency, in such manner as may be prescribed. The proviso thereto carves out an exception only qua the Management Seats. The petitioner admits that five students aforesaid admitted by it through lateral entry were not admitted in the process of counselling conducted by the respondent No.3 University but were admitted by the petitioner on its own.

Upon the same being put to the counsel for the petitioner, he replies that the requirement of Section 13 of the Act is only for making admission through a Common Entrance Test to be conducted by the designated agency i.e. the respondent No.3 University. He argues that each of the said five students had participated in the Common Entrance Test held by the respondent No.3 University and cleared the same. He contends that there is no requirement of the students being admitted through the process of counselling held by the respondent No.3 University, so long as they were within the permitted strength for admission.

12. The argument aforesaid besides being preposterous and contrary to the Scheme of the Act, overlooks Section 3(d) of the Act which defines “Common Entrance Test” as an entrance test conducted for determination of merit of the candidates, followed by centralized counselling for the purpose of merit based admission to an Institution through a single window procedure by the designated agency. Section 3(w) defines “single window system” as the centralized system for admissions to institutions.

13. It is thus clear that the students could be admitted by the petitioner only through the Common Entrance Test. The only students who could be admitted by the petitioner directly were under its Management Quota seats. It is not the case of the petitioner that the five students were admitted in the Management Quota seats. According to the petitioner the said five students were admitted while admitting students to the Management Quota seats.

The admission of the said five students is clearly in violation of Section 13 of the Act and accordingly an offence within the meaning of Section 18 of the Act. It is immaterial that the admissions were within the sanctioned strength.

14. The counsel for the petitioner has vehemently argued that the respondents 1 & 2 in the show cause notice have wrongly presumed the admission of the said five students to be in Management Quota and contended that the said admissions were against the General Quota. As aforesaid, in the General Quota there can be no admission directly by the petitioner and admission could only be through the Common Entrance Test. It may however be noted that the stand of the petitioner in this regard has been inconsistent. Rather from the correspondence, it is found that the petitioner either itself was treating the said five admissions in the Management Quota or attempting to justify the same as under Management Quota and for which the admissions were not required to be through the process of Common Entrance Test and counselling. As noted hereinabove, the petitioner had repeatedly sought the approval of the respondent No.3 University for the said five admissions. Such approval under Rule 8(viii) of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Rules, 2007, is required only with respect to the Management Quota seats. Had the petitioner itself not

been treating / representing the said five admissions to be under the Management Quota, there was no need for the petitioner to seek approval of the University for the same. In any case, it is now admitted that the said five admissions are beyond the permitted strength for Management Quota.

15. The argument of the counsel for the petitioner that the admission by the petitioner of its guilt is erroneous is thus without any basis. The petitioner was fully aware of the violation of the provisions of the Act committed by it and had for this reason only while rendering explanation of the same, sought apology and offered payment of token penalty. The petitioner as aforesaid also gave an undertaking to the respondents to secure provisional enrollment number for the aforesaid five students for the first semester end term examination. The petitioner however turned turtle while approaching this Court.

16. The explanation of the petitioner of a mistake cannot be accepted and cannot be a mitigating factor. The petitioner on 20th August, 2008 itself was informed that the fifteen provisional admissions made by it were illegal and void under Section 14 of the Act. The petitioner thereafter made ten out of the said fifteen students participate in the counselling and the said ten students were admitted. The petitioner notwithstanding the same continued with the admission of the remaining five students and / or admitted them on 30th August, 2008 knowing fully well of the illegality thereof. The petitioner was obviously guided by commercial reasons. The petitioner

even thereafter persisted with the admission and made the respondents issue provisional enrollment number to the five students on the undertaking that it will compound the offence. The petitioner cannot now be heard to contend otherwise.

17. The petition is therefore found to be not only without merits but also *mala fide*. The petition is dismissed. The sum of ₹10,00,000/- deposited by the petitioner in this Court together with interest accrued thereon is directed to be released by cheque / draft in the name of the “The Delhi Higher Education Aid Trust.” The petitioner is directed to pay the balance sum of ₹15,00,000/- by draft in the name of the “The Delhi Higher Education Aid Trust” to the respondents within four weeks of today together with interest thereon at the rate of 11% per annum from 31st May, 2010 when stay with respect to the said amount was obtained and till the date of payment. The respondents having been compensated by interest for the delay in payment, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

11th January, 2011
‘gsr’