

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) No.505/2010**

Decided on: 27.01.2012

IN THE MATTER OF

MANAGEMENT EDUCATION & RESEARCH INSTITUTE Petitioner

Through: Mr. Raghav Awasthi, Adv.

versus

DIRECTOR HIGHER EDUCATION & ORS. Respondents

Through: Ms. Purnima Maheshwari with
Ms. Poonam Kumari and Mr. D.K. Singh, Advs.
for R-1 & 2.

Mr. Mukul Talwar, Adv. for R-3.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for quashing of the order dated 29.12.2009 passed by a Committee authorized by the Lt.Governor, NCT of Delhi, in exercise of the powers under Section 19(1) of Delhi Professional Colleges or Institution (Prohibition of Capital Fee, Regulation of Admission Fixation of non-Exploitative Fee & Other Measures to Ensure Equity and Excellence) Act, 2007 (in short '**the Act**'), whereunder a penalty of ₹10.00 lacs was imposed on the petitioner/Institute for compounding an offence punishable under Section 18 of the Act on

account of non-compliance of Rule 8(2)(a)(ii) of the Rules made by the Government in pursuance of the powers conferred upon it under Section 23 of the Act.

2. The offence alleged against the petitioner/Institute was set out in a notice to show cause dated 12.6.2009 issued by respondent No.1/Director Higher Education calling upon it to explain as to why penalty should not be imposed on it for contravening the provisions of the aforesaid Act, upon compounding an offence under Section 18 of the Act.

3. While issuing notice on the present writ petition, vide order dated 25.1.2010, it was directed that subject to the petitioner/Institution depositing a sum of ₹2.50 lacs within four weeks, without prejudice to its rights and contentions, operation of the impugned order dated 29.12.2009, would remain stayed.

4. Learned counsel for the petitioner/Institute states that the aforesaid amount was duly deposited by the petitioner/Institute and, vide order dated 19.8.2010, the interim order dated 25.1.2010 was made absolute till the decision of the petition with the condition that in the event of the petition being dismissed, the petitioner/Institute would be liable to pay interest @ 9% per annum on the stayed amount from 25.1.2010 till the date of payment. It was further directed that the amount of ₹2.50 lacs deposited by the petitioner, be released to respondent No.3/University

subject to final adjudication in the petition. It was however clarified that if respondent No.3/University did not take any steps for release of the amount within one month from the date of passing of the order, the amount would be kept in an interest bearing fixed deposit.

5. Counsel for respondent No.3/University states that his client had not approached the Registry for release of the aforesaid amount and therefore the Registry was required to place the amount in an interest bearing fixed deposit.

6. Before advertizing to the factual matrix of the case, it would be necessary to take into consideration the relevant provisions of the Act.

7. Section 13, which deals with the manner in which admissions are to be made in an institution, that is subject to the provisions of this Act, is as under:-

"13. An institution shall, subject to the provisions of this Act, make admission through a common entrance test to be conducted by the designated agency, in such manner, as may be prescribed :

Provided that the management seats may be advertised and filled up, from the candidates who have qualified the common entrance test, by the institution in a transparent manner based on the merit at the qualifying examination."

8. Section 18 deals with the powers to convict the defaulting institution and lays down the offences and penalties, reads 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."

9. Section 19 envisages compounding of offences punishable under Section 18 in a manner as stated below :

"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 five 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."

10. Section 23 empowers the Government to make rules in relation to various matters including the manner of filling the management seats by

the management of an institution covered under Section 13, as laid down in clause (i), sub-section (2) of Section 23.

11. The Rules framed by the Govt. of NCT of Delhi under the Act include Rule 8, which relates to allotment of seats. Relevant for consideration in the present case is Rule 8(2)(a)(ii) of the Rules, which reads as below:-

"8. Allotment of seats:

(1) xxx xxx xxx

(2) Every institution other than a minority institution, shall provide for seats in respect of management quota, wards of defence personnel, persons with disability and others the manner as described below:-

(a) Management Quota. -(i) The Chairman or Secretary of the highest management body of the institution shall furnish an affidavit to the designated agency, mentioned therein that they have followed the procedure laid down in the Act and these rules in transparent manner and that they have done so without any prejudice or undue favour. Such an affidavit shall accompany the list of successful candidates under management quota, to be lodged with the University in the manner laid down in sub-clause (viii).

(ii). The institution shall advertise the admission notice for management quota seats in at least two leading daily newspapers, one in Hindi and other in English in addition to displaying the same on the institution's website and the institution's notice Board, kept at a conspicuous place. The admission notice shall be displayed at least a fortnight before the last date for closing the admission for the concerned course in the University and shall include therein information necessary for the students seeking admission in management quota seats. The admission notice shall include herein the place for which admission forms will be available, the date, time and manner for submission of completed applications and the schedule for various admission processes of counseling. Prospective

applicants shall be given a period of at least eighteen days to apply for seats under the management quota, in the aforementioned manner.”

12. The factual matrix of the case lies in a narrow compass. The petitioner/Institute is a society engaged in providing education to students. This institute is affiliated to respondent No.3/University. The academic course in question, which is the subject matter of the present petition, is a three years MCA course. For the academic year 2008-09, the petitioner/Institute had advertised the management quota seats through its website and its notice board, instead of advertising the said seats in two leading newspapers (one in Hindi and one in English) as required under Rule 8(2)(a)(ii) of the Rules. When the aforesaid deficiency in filling up the management quota seats was noticed by respondent No.3/University, it brought the same to the notice of respondent No.1/Director of Higher Education vide letter dated 27.10.2008. The petitioner/Institute was also called upon to furnish an explanation.

13. Vide letter dated 02.12.2008 addressed to respondent No.1/Director of Higher Education, the petitioner/Institute admitted to having breached the aforesaid Rule and sought condonation of the lapse and expressed its sincere regret. Vide letter dated 03.12.2008 addressed by

the Registrar of the petitioner/Institute to respondent No.1/Director of Higher Education, regret was expressed and the respondent No.1/Director of Higher Education was requested to take a lenient view in the matter and impose minimum penalty as the Institute had already apologized for the error. On 12.06.2009, respondent No.1/Director of Higher Education issued a notice to show cause to the petitioner/Institute stating *inter alia* that a meeting of the committee constituted under Section 19 of the Act was held on 12.05.2009 to compound an offence under Section 18 of the Act as it had been noticed that the petitioner/Institute had not advertised the admission notice of the management quota seats for the MCA course in two leading newspapers as required under the said rules. The show cause notice called upon the petitioner/Institute to explain its conduct in contravention of the provisions of the Act.

14. The petitioner/Institute submitted its reply on 14.6.2009, to the notice to show cause stating *inter alia* that the admission notice was displayed in the website of the Institute and on the notice board but on account of an inadvertent omission, the petitioner/Institute did not advertise the admission notice in two daily newspapers. It was further explained that despite the fact that the advertisement could not be published in newspapers, there was a very good response from applicants as indicated by the fact that the Institute received 96 applications against 6 seats under the

management quota. Under such circumstances, condonation of the omission was sought by the petitioner/Institute. On 7.7.2009, the Committee granted a personal hearing to the petitioner/Institute for compounding of the offence under Section 19 of the Act. After taking into consideration the submissions made by the petitioner/Institute, the Committee took into account the fact that it was the first time that the Institute had committed such an offence after the Act had come into force, therefore, by the impugned order dated 29.12.2009, it was decided to compound the offence by imposing a penalty of ₹10 lacs on the petitioner/Institute for contravening Rule 8(2)(a)(ii) of the Rules. The said penalty was directed to be deposited with respondent No.1/Director of Higher Education, within two weeks from the date of passing of the order.

15. The petitioner/Institute has assailed the impugned order dated 29.12.2009 on the ground that the breach in the present case was purely technical in nature and no penalty ought to have been imposed on it. Learned counsel for the petitioner/Institute states that the right to be heard is a fundamental right under Article 14 of the Constitution of India and in the present case, the said right was denied to the petitioner/Institute for the reason that the Registrar of respondent No.3/University was a member of the Committee constituted under the Act and given the fact that respondent No.3/University itself was the complainant, he could not have been made a

part of such a Committee. It is therefore submitted that on account of a conflict of interest, the petitioner/Institute has been denied the fundamental right enshrined in Article 14 of the Constitution of India. In support of his submission, learned counsel relies on the decisions in the cases of Basheshar Nath vs. Commissioner of Income-Tax, Delhi & Rajasthan & Anr. reported as **AIR 1959 SC 149**, and Olga Tellis & Ors. Vs. Bombay Municipal Corporation and Ors. reported as **(1985) Supp. 2 S.C.R. 51**.

16. It is next submitted by learned counsel for the petitioner/Institute that assuming, without admitting, that the petitioner/Institute is guilty of the offence alleged against it, the punishment of penalty of ₹10.00 lacs imposed on it is grossly disproportionate to the offence and therefore ought to be waived and if not waived, reduced to a large extent. He seeks to explain the aforesaid stand by pointing out that the annual fee payable by each student is ₹50,000/- and considering the fact that the petitioner/Institute could have allotted six seats in the management quota, at best, the Committee ought to have imposed a fine of ₹3.00 lacs on the petitioner/Institute by multiplying the annual fee of ₹50,000/- into six. Learned counsel for the petitioner/Institute relies on the judgment in the cases of Bhagat Ram vs. State of Himachal Pradesh, reported as **AIR 1953 SC 454**, M/s. Hindustan Steel Ltd. vs. The State of Orissa reported as **AIR 1970 SC 253** and Ranjit Thakur vs. Union of India reported as **(1987) 4**

SCC 611 to urge that the Court is empowered to go into the quantum of punishment and ought to do so in the present case as the same is entirely disproportionate to the offence alleged against the petitioner/Institute. Lastly, reliance is placed on the Heydon's Rule of Interpretation to urge that the mischief, sought to be prevented by the Act ought to be kept in mind and having regard to the facts of the case, where the applications received in respect of six seats were far more than the number of seats available in the management quota, the intent and the object of the Act was satisfied even without any advertisement having been inserted by the petitioner/Institute in two national newspapers.

17. Per contra, learned counsel for respondent/University vehemently opposes the present petition and submits that a bare perusal of Section 18 of the Act reveals that it deals with "offences" and not "penalties", as sought to be urged by the learned counsel for the petitioner/Institute. He states that equating the present case with the case of M/s Hindustan Steel Ltd. (supra) would be of no avail to the petitioner/Institute as the present case is not one of imposition of penalty but one where the offence has been compounded under Section 19 of the Act and a penalty has been imposed on the petitioner/Institute. He further questions the assumption on the part of the petitioner/Institute that the Registrar of respondent No.3/University is an interested party in the present

case and therefore ought not to have been made a part of the Committee constituted by the Government. It is stated that the role of respondent No.3/University is only that of an informant and the Registrar cannot be treated as a complainant, as urged by the other side. He asserts that the offence envisaged under the Act is an offence against the public at large inasmuch as the Act provides for equity and excellence in professional education in the National Capital Territory of Delhi and such an object which is a laudable one, is meant for the higher good of the public at large and not to subserve the interest of respondent No.3/University. Thus, no bias could be claimed by the petitioner/Institute against the respondent No.3/University or its Registrar. Learned counsel further states that the vires of Rule 8(2)(a)(ii), sought to be challenged by the petitioner/Institute, has not been taken as a ground for challenge in the writ petition and therefore ought not be examined by the Court. Lastly, it is urged that in any case, the penalty imposed on the petitioner/Institute has been on the lower side for the reason that Section 19 of the Act envisages that penalty shall not, in any case, be less than ₹5.00 lacs and shall not exceed the maximum amount of fine, which is ₹1.00 crore, whereas, in the present case, the petitioner/Institute has been let off quite lightly with a fine of ₹10.00 lacs imposed on it.

18. This Court has heard the learned counsels for the parties and

carefully perused the documents placed on record, as also examined the extant provisions of law as noticed herein above. It is an undisputed position that under Section 13 of the Act, the petitioner/Institution is required to make admissions through a common entrance test in the manner as prescribed by the respondent No.3/University and further that the management quota seats are required to be advertised and filled-up from amongst the candidates who have qualified the common entrance test, but in a transparent manner, based on merit at the qualifying examination. Rule 8 lays out the manner in which the allotment of seats are to be made by a college or an institute for each course. Sub-rule 2(a)(ii) of Rule 8 stipulates that an institution shall advertise the admission notice for filling up the management quota seats in at least two leading daily newspapers, one in Hindi and the other in English in addition to displaying the same on the website of the institution as also on the notice board of the institution at a conspicuous place. The timeline for display of the advertisement as also for submission of applications of prospective applicants has also been stipulated in the aforesaid Rule.

19. In the case in hand, it is admitted that the petitioner/Institute had not complied with the requirement of advertising the management quota seats in two leading newspapers. Instead, the petitioner/Institute chose to display the advertisement only on its website and on the notice

board. The explanation sought to be offered by the petitioner/Institute for the aforesaid breach of the terms of allotment of management quota seats, is that the same was on account of inadvertence on the part of its officers and further, that though the admission notices were not advertised in two newspapers, they were prominently displayed on its website and on the notice board. It is pertinent to note that the aforesaid admission of the mistake committed by the petitioner/Institute was reiterated by it in its letter dated 3.12.2008 addressed to respondent No.1/Director of Higher Education, wherein sincere regret was expressed with an assurance that due care would be taken in future and further, the petitioner/Institute requested that a lenient view may be taken in the matter by imposing a minimum penalty on it.

20. Merely because the petitioner/Institute had tendered an unqualified apology for the mistake committed by it and requested the respondent No.1/Director Higher Education to impose a minimal penalty on it for the said breach, cannot be treated as a ground to overlook the illegality committed by it in the process of filling-up the seats in the management quota. It is pertinent to note that for the contravention of such a provision, Section 18 of the Act envisages punishment of imprisonment for a term which may extend to three years, or with fine which may extend to one crore rupees, or with both. In the present case, the Committee had agreed

to compound the offence so as to impose a lighter punishment on the petitioner/Institute. The punishment to be imposed on the defaulting institute has been laid down in Section 19 of the Act. The phrase "punishment" is not interchangeable with the phrase "penalty" as sought to be urged by the learned counsel for the petitioner/Institute. The term "fine" has been used in both, Sections 18 & 19 of the Act, while further specifying that in any case the said fine would not be less than ₹5.00 lacs. However, the manner of calculation of the fine has been left entirely to the discretion of the Committee, authorized by the Government in this behalf.

21. This Court is not inclined to accept the submission made by learned counsel for the petitioner/Institute that the fine imposed on it ought to be calculated by taking into consideration the number of seats under the management quota and then multiplying them with the fee that would have been payable by the students in respect of the first year of the course to be undertaken by them. However, even if such a yardstick was to be adopted by the Committee to assess the penalty to be imposed on the petitioner/institute, considering the fact that the course in question is a course spread over a period of three-years and there were six seats available for allotment in the management quota and the annual fee fixed by the petitioner/Institute is ₹50,000/- per student, then, by the end of the course, each student would be expected to have deposited a sum of ₹1.50

lacs with the petitioner/Institute. The said amount of ₹1.50 lacs, if multiplied by six seats, would total to a sum of ₹9.00 lacs. It may further be noted that as per the respondent No.3/University, the annual fee for the year 2008-09 for six management quota seats was ₹65,000/- X 6 = ₹3,90,000/- and the students taking admission under the said quota would have deposited a sum of ₹11,70,000/- with the petitioner/institute at the end of three years. This calculation would clearly demonstrate that the quantum of fine imposed by the Committee on the petitioner/Institute has been quite reasonable inasmuch as the same has been assessed as ₹10.00 lacs, which is on the lower side.

22. As regards the argument urged by the counsel for the petitioner/Institute that principles of natural justice have been violated in the present case for the reason that the petitioner/Institute was not afforded an appropriate opportunity of hearing and its right had been violated on account of the fact that the Registrar of respondent No.3/University was a part of the Committee, this Court finds no force in the aforesaid submission. Learned counsel for respondent No.3/University has rightly made short shrift of the said argument by pointing out that the role of the Registrar of respondent No.3/University is only regulatory in nature and in the present case, the latter had simply forwarded the information gathered by it from the petitioner/Institute and left the matter in the hands of respondents No.1

& 2. In fact, respondents No.1 & 2 are the ones, who decided to take notice of the offence committed by the petitioner/Institute and initiate action under the Act. The offence committed by the petitioner/institute can only be described as an offence against the public at large and not against any particular individual. Thus, by no stretch of imagination, can the respondent No.3/University be treated as a complainant in the present case. At best, the role which can be assigned to it is that of an informant of an offence committed by an institution governed under the Act.

23. As for the contention of the learned counsel for the petitioner/Institute that the Institute ought to be entirely absolved from the penalty imposed on it as the breach committed by it is purely technical in nature and on application of the Heydon's Rule of Interpretation, it would be seen that the requirement of advertising the management quota seats was satisfied to a large extent in view of the number of applications received by the petitioner/Institute, this Court is not inclined to accept the aforesaid argument. The breach committed by the petitioner/Institute cannot be treated to be only technical in nature as sought to be asserted by learned counsel for the petitioner/Institute. The mode and manner of filling-up the management quota seats has been clearly laid out under Rule 8(2)(a)(ii) of the Rules. Once the petitioner/Institute decided to advertise the management quota seats and fill up the same, then Rule 8 of the Rules

would automatically come into play and in such circumstances, the term “may” used in the proviso to Section 13 as a prefix to the phrase, “be advertised and filled-up” has to be read only in the context of Rule 8(2)(a)(ii) of the Rules, which mandates that an institution ought to issue an advertisement in the prescribed manner. The petitioner/Institute cannot be permitted to interpret the said Rule to state that displaying an advertisement on its website and on its notice board should be treated as sufficient for the purpose of advertisement and thus, claim an option to dispense with the requirement of advertising the admission notice for filling-up the management quota seats into two leading newspapers. The purpose and intent of the aforesaid Rule is to ensure that the notice of filling-up the management quota seats gets as wide a publicity as possible. It is for this reason that the advertisements are required to be carried in two languages, Hindi and English and not only in local newspapers, but in two leading daily newspapers, besides displaying the same on the institution’s website and its notice board, as prescribed in the Act and Rules.

24. The last submission made by the counsel for the petitioner/Institute is a prayer for compassion on the ground that the petitioner/Institute is a philanthropic institution and has been set up to provide quality education to students from underprivileged background and thus, the fine of ₹10.00 lacs imposed on it would be too heavy a burden for

it to bear. The aforesaid explanation offered by learned counsel for the petitioner/Institute for seeking reduction of the fine imposed on the petitioner/Institute in terms of the impugned order is not tenable inasmuch as all the institutions recognized for imparting higher education are required to be charitable organizations under the Act. The petitioner/Institute herein is no different from other similarly placed institutions and thus, cannot claim any special treatment on the basis of being a charitable organization.

25. It may also be noted that even otherwise, in the course of exercising its power under judicial review, the Court is required to examine the decision making process of an authority and not the decision itself. As held in the Supreme Court in the case of A.P.S.R.T.C. Vs G. Srinivas Reddy, reported as **AIR (2006) SC 1465**, the power of judicial review under Article 226 lays emphasis on the decision making process, rather than the decision itself and only such an action is open to judicial review, where an order or action of the State or an authority is illegal, unreasonable, arbitrary or prompted by malafides or extraneous consideration. In the present case, even if it is assumed that the decision arrived at by the Court could have been different from the one arrived at by the Committee, as for example, the quantum of fine imposed in the impugned order, could have been less than or more than that imposed by the Committee, would in itself not be a ground for interference as the Court ought not to step into the shoes of the

Committee and then arrive at a different conclusion.

26. For all the aforesaid reasons, the present petition is dismissed being devoid of merits. As the petitioner/Institute has already deposited a sum of ₹2.50 lacs in terms of the order dated 25.1.2010, the said amount is directed to be released to respondent No.1 in terms of the operative para of the impugned order, along with the interest accrued thereon. It is further directed that the petitioner/Institute shall deposit the balance sum of ₹7.50 lacs with respondent No.1 along with interest payable @ 9% per annum from 25.1.2010 till the date of payment in terms of the order dated 19.08.2010. Needful shall be done within a period of four weeks. In view of the fact that interest is being paid by the petitioner/Institute on the amount of fine imposed on it, the Court does not deem it appropriate to direct the petitioner/Institute to pay any costs to the other side.

JANUARY 27, 2012
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(HIMA KOHLI)
JUDGE