

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

% Date of Decision: 30.10.2013

+ W.P.(C) 7269/2012

AKANSHA GUPTA AND ORS Petitioner
Through: Mr R.K. Saini, Adv.

versus

UNIVERSITY OF DELHI AND ORS Respondent
Through: Mr Mohinder J.S. Rupal, Adv.

And

+ W.P.(C) 7270/2012

DEEPAK DABAS AND ORS Petitioner
Through: Mr R.K. Saini, Adv.

Versus

UNIVERSITY OF DELHI AND ORS Respondents
Through: Mr Mohinder J.S. Rupal, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioners before this Court were the students of the School of Open Learning, University of Delhi, in its undergraduate courses. They appeared in the final year examination held in May-June, 2012 and even before declaration of their result, they appeared in the entrance

examination for admission to various post graduate courses of the University of Delhi, since, under the Rules of the University, they were entitled to appear in the said test, while awaiting the result of their qualifying examination. The petitioners were given admission in the post graduate course and started studying in the said course. The admission granted to the petitioners in the post graduate course, however, was cancelled vide communication dated 19.11.2012 on the ground that they had failed to submit the result of the graduate examination in terms of the undertaking given by them at the time of taking admission to the post graduate course. Being aggrieved from the aforesaid cancellation, the petitioners are before this Court, seeking the following relief:-

In W.P.(C) No. 7269/2012

- (a) A Writ of Certiorari calling for the records of the case and peruse the same;
- (b) A Writ of Certiorari quashing the action on the part of the respondents in cancelling on 19.11.2012 the provisional admission granted to the petitioners in July, 2012 in the post graduate course (M.Com/M.A.) after having qualified in the entrance test, merely on the ground that University has communicated 'no change' in the schedule of admissions notified on 28.05.2012 for the academic session 2012-13, (according to which the last date for submission of mark sheet of graduate degree examination was 31.08.2012) totally ignoring the factual

position that the result of graduation examination undertaken by the petitioners was to be declared by the university itself and the same has not been declared by it so far, being illegal, arbitrary, unjust, unwarranted and irrational and in violation of the principles of equity, justice and good conscience and consequently the cancellation notices dated 19.11.2012.

- (c) A writ of Mandamus commanding the respondents to forthwith declare the result of the graduation examination undertaken by the petitioners in the month of May-1st week of June, 2012;
- (d) A writ of Mandamus commanding Respondents to allow the petitioners to appear in the First Semester Examination of the Post Graduate Course (M.Com/M.A.), in which they were given admission in July, 2012 after qualifying in the Entrance Test;
- (e) A Writ of Mandamus commanding the Respondents to pay the costs of the petitioner to the petitioner;

In W.P.(C) No. 7270/2012

- (a) A Writ of Certiorari calling for the records of the case and peruse the same;
- (b) A Writ of Certiorari quashing the action on the part of the respondents in cancelling on 19.11.2012 the provisional admission granted to the petitioners in July, 2012 in the post graduate course (M.Com/M.A.) after having qualified in the entrance test, merely on the ground that University has communicated 'no change' in the schedule of admissions notified on 28.05.2012 for the academic session 2012-13, (according to which the last date for submission of mark sheet of graduate degree examination was 31.08.2012) totally ignoring the factual position that the result of graduation examination

undertaking by the petitioners was to be declared by the university itself and the same in fact already stood declared on 29.9.2012/26.10.2012 and according to which the petitioners were qualified and eligible for admission but the University has not issued/sent the marksheet to the respondent No. 2 so far, being illegal, arbitrary, unjust, unwarranted and irrational and in violation of the principles of equity, justice and good conscience and consequently the cancellation notices dated 19.11.2012.

- (c) A writ of Mandamus commanding the respondents to confirm the admission given to the petitioners in Post Graduate Courses (M.Com/M.A.) for the Academic Session 2012-13 and allow them to continue their studies and complete the course;
- (d) A writ of Mandamus commanding Respondents to allow the petitioners to appear in the First Semester Examination of the Post Graduate Course (M.Com/M.A.), in which they were given admission in July, 2012 after qualifying in the Entrance Test;
- (e) A Writ of Mandamus commanding the Respondents to pay the costs of the petitioner to the petitioner”

2. In its reply-affidavit, the respondent-University of Delhi has stated that since there are as many as 3.5 lakhs students in the School of Open Learning at the undergraduate level, the University conducts examinations for such students separately from the examination for regular students and there can be no synchronizing in declaring the results of the regular students and the results of students admitted in the School of Open Learning. The University has also expressed space

constraints due to which booklets of such students cannot be evaluated in one go. The emphasis in the affidavit, therefore, is on the fact that considering the large number of students admitted in School of Open Learning and the infrastructural constraints, it is not possible to declare their results along with the result of the regular students.

3. When these writ petitions came up for hearing, this Court, noticing that the petitioners were not being issued admit cards for the examination in the post graduate course, scheduled to commence from 22.11.2012 and having noticed that pursuant to provisional admission granted to them in the post graduate course, they had attended classes for more than four months, directed the University to permit them to appear in the said examination, while making clear that no special equities will flow in their favour. The result of the petitioners was directed to be kept in a sealed cover.

Thereafter, vide another interim order dated 30.04.2013, the petitioners were directed to appear in the second semester examination of the post graduate course scheduled to commence from 06.05.2013 and their result was directed to be kept in a sealed cover.

4. This is not in dispute that the rules of the University permitted the students appearing in the final year of the qualifying examination to

appear in the entrance test for admission to the post graduate courses and it was under the aforesaid rule that the petitioners appeared in the entrance test and were declared successful. The University does not insist upon submission of the result of the qualifying graduate examination before granting admission in the post graduate course and the students who have appeared in the qualifying examination and whose results have not been declared are granted provisional admissions, on furnishing an undertaking to submit the result of the qualifying graduate examination on or before the date stipulated in such undertaking. The qualifying graduate examination, in which the petitioners appeared in May-June, 2012, was conducted by none other than Delhi University. Having allowed the petitioners to appear in the entrance test and granted them provisional admission to the post graduate course, even before declaration of the result of the qualifying graduate examination, the University cannot now be allowed to take advantage of its own delay in declaring the result of the qualifying graduate examination. When the University requires such candidates to furnish an undertaking to submit the result of the qualifying examination by a particular date and grants provisional admission on such an undertaking, it is expected that the University will declare the

results of the qualifying examination conducted by, it before the last date stipulated in the undertaking for submission of such result expires. The petitioners before this Court appeared in the entrance examination for the post graduate course and took admission in the post graduate course pursuant to the rules of the University. They also furnished undertaking as required by the University. If they are unable to comply with the undertaking on account of the delay in declaration of result attributable solely to the University, the petitioners cannot be penalized for the default in furnishing such an undertaking, since it is the University alone which is responsible for their not being able to comply with the said undertaking. I fail to appreciate how the University without declaring the result of the qualifying examination can expect the petitioners to comply with the undertaking, by furnishing the said result. Unless and until results of the qualifying graduate examination are declared by the University, it is impossible for the petitioners to comply with the undertaking given to the University and no law can expects a person to do impossible things.

5. The University, in my view, irrespective of whether the examinees are regular students or the students of School of Open Learning, should declare the result of the qualifying graduation

examination well in time so that a situation wherein the students are unable to submit the result of the qualifying graduate examination does not arise at all. It is for the University to create the infrastructure required for declaration of the results of the students of the School of Open Learning well in time and it would be wholly unfair if the University does not allow the candidates who may have passed out their qualifying graduate examination to pursue their post graduate course, when the University itself allows such candidates not only to appear in the entrance test for admission to the post graduate course, but also grants them provisional admission to the said course.

6. In these petitions, I need not examine the question as to whether the University would be entitled in law in not allowing the candidates whose result of the qualifying graduate examination is not declared, from taking admission to the higher course, since such a situation has not arisen in these petitions, on account of the University having granted them provisional admission to the post graduate course.

7. During the course of the arguments, the learned counsel for the University referred to an order dated 09.10.2013 passed by a Division Bench of this Court in W.P.(C) No. 4300/2013 titled *Fight for Human Rights vs. Union of India and Ors.* A perusal of the aforesaid order

would show that the writ petition was dismissed on the ground that none of the affected students had come forward to file a petition and the petitioner before the Court had not made any prior representation to the University. It was also found that the petition was based only on a newspaper cutting. The aforesaid order, therefore, would have absolutely no bearing on the merits of these petitions.

8. The learned counsel for the University drew my attention to clause 7.15 of the Prospectus, issued by the University for the year 2013-14 for admission to the undergraduate courses through School of Open Learning. It is stated in the aforesaid clause that as per directions received from the University vide its letter dated 10.05.2013, the students are informed that the examination and the result schedule of the School of Open Learning are different from that of regular streams of University of Delhi. The aforesaid clause, in my view, is of no help to the respondent-University for two reasons; firstly the petitioners before this Court appeared in the final year examination of the undergraduate course and thereafter took admission in the post graduate course of Delhi University in the year 2012-13 and therefore, the communication issued by the University on 10.05.2013 can have no application to them, and secondly, the aforesaid information given to the candidates seeking

to take admission through School of Open Learning would have no implication when the University allows such candidates to appear in the entrance test for the post graduate courses and then grants them provisional admission even prior to declaration of their result of undergraduate examination. As noted earlier, the University cannot be allowed to take advantage its own action by first requiring the candidates to give an undertaking to furnish the result of the qualifying examination by a particular date and then not declaring the result of the said examination or before the deadline stipulated in the undertaking.

9. For the reasons stated hereinabove, the respondent-University is directed to declare the results of the qualifying graduate examination of the petitioners within four weeks unless such a result has already been declared. The University shall also declare the result of the post graduate examination of such of the petitioners, who are declared to have passed qualifying graduate examination within two weeks thereafter and shall then allow them to pursue the post graduate course in which they are studying. Such of the petitioners who do not pass the qualifying graduate examination shall not be entitled to pursue the post graduate course to which provisional admission was granted by the University.

The writ petition stands disposed of accordingly.

No order as to costs.

OCTOBER 30, 2013
BG

V.K. JAIN, J.