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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4745/2014

MAHEN RAJORA

..... Petitioner

Through: Mr. Rajesh Ranjan Dubey, Advocate.

versus

UNIVERSITY OF DELHI & ANR.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Advocate for
respondent No.1.

Ms. Latika Choudhury, Advocate for
Ms. Avnish Ahlawat, Advocate for
respondent No.2.

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Date of Decision : 30th July, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM Appl. 9458/2014 (exemption) in W.P.(C) 4745/2014

Allowed, subject to just exceptions.

Accordingly, present application stands disposed of.

W.P.(C) 4745/2014 & CM Appl. 9457/2014

1. Present writ petition has been filed seeking a direction to respondents to consider petitioner's candidature and to grant him admission in the course

of his choice on the basis of seats available in Information Technology course.

2. Mr. Rajesh Ranjan Dubey, learned counsel for petitioner contends that there is an anomaly in the counselling/admission schedule notified by respondent-University. He further states that though the petitioner during his visit to the institute was informed by one Mr. Rawat that the counselling for Delhi Scheduled Castes would be held on 23rd July, 2014, yet it was held on 22nd July, 2014. He also states that certain seats in the aforesaid course are still vacant.

3. Mr. Dubey submits that assuming that the petitioner was unable to appear for counselling on a particular date, he should not be penalised. In support of his submission, he relies upon a judgment and order of this Court dated 30th August, 2011 passed in ***Yatharth Gupta vs. Netaji Subhas Institute of Technology & Anr., W.P.(c) 5947/2011*** wherein it has been held as under:-

“7. In the prospectus 2011-12, issued by the respondent institute, it has been clearly indicated that to participate in the second phase of counseling, physical presence and marking of attendance are compulsory for all those candidates who were not allotted any seat in the 3rd round of first phase of counseling. It has been further indicated that based on the physical presence and marking of attendance and requisite information provided by the candidates, the online seat allotment result of second phase will be available online at the website of the respondent as per the schedule for participation in the various rounds of second phase of counseling indicated therein. The said provision for physical presence and marking of attendance has been made compulsory, possibly to exactly know as to how many students are serious in seeking admission in the respondent institute and also about those who have not been allotted any seat till the 3rd round of first phase of the counseling. No fault thus can be found in the

incorporation of the provision to make physical presence and marking of attendance compulsory as the institute has every right to know the seriousness of those candidates aspiring to seek admission in their institute as at the same time the same very student may either secure admission in other such institutes or may not be interested to seek admission in the respondent institute. The dissension is not thus with the rule of making the physical presence and attendance compulsory for all those candidates who were not allotted any seat till the 3rd round of first phase of counseling, but the problem is certainly created when no provision has been made for making an exception for all those who failed to present themselves in the counseling due to circumstances beyond their control including the medical exigencies. Surprisingly, the respondent has also not made any provision where the candidates in such a situation give an authority to their family members to represent them to mark their attendance. It would be a travesty of justice if a student, who after having put his hard work qualifies the highly competitive test; secures a meritorious position but gets deprived to seek admission in an institute as per his rank and merit just because he could not physically present himself to mark his attendance on a stipulated date so as to make him eligible to participate in the second phase of online counseling due to reasons beyond his control . It cannot be ruled out that due to certain exigencies, which certainly includes medical exigencies as well, a student himself may not be able to physically present himself to mark his attendance on a particular given date which will consequently disentitle him to participate in the second phase and will most certainly prove fatal to his career as he is deprived admission on this ground alone. Ordinarily, the courts lean in favour of the laid down rules and instructions and it is only for exceptional reasons, an unwritten rule needs introduction in exceptional circumstances to advance the cause of justice. No explanation came forth from the respondent as to why no such provision has been made in the prospectus to deal with the medical exigencies or other emergent situations beyond human control, when possibly an aspiring student may not present himself to mark his attendance on a particular date. The respondent has also not advanced any reasons for not even making a provision for such a candidate to give authority to his blood relation to represent him to mark his

attendance on a stipulated date. In such like situations, the writ court cannot act as a helpless, hapless mute spectator as the prime duty of the court is to dispense justice and not to entrap itself in the cobwebs of those rules which do not cater to deal with the normal befalling of human lives. It is also pertinent to mention that this court in similar circumstances in WPC No. 3166/2011 and WPC No.3237/2011 had granted relief to the petitioner who could not physically present themselves at the time of counseling due to medical exigencies. The petitioner before this court is a resident of Ghaziabad and on the evening of 25.07.2011 he had suffered severe gastritis fever but still he made an attempt to leave his place on the morning of 26.07.2011 to proceed for marking his attendance but could not succeed as he felt unconscious at Anand Vihar Metro Station. As per the petitioner he along with his father had visited the respondent institute on 01.08.2011 but finding no plausible answer from the officials of the respondent, he ultimately, vide his letter dated 12.8.2011 to the director of the respondent institute pleaded his case for online participation in the second phase of counseling. There is no reason to disbelieve the said version of the petitioner, although this court does feel that the petitioner should have been more active and diligent in taking up his matter with the respondent institute and negligence is writ large on the part of the petitioner but still considering the future of the petitioner and particularly looking into the fact that the third round of the second phase of counseling is still in progress and participation of the petitioner will not deprive any candidate who is higher in rank to the petitioner or disturb a candidate who has already secured a seat, this Court feels it to be a fit case to exercise its extraordinary writ jurisdiction for the purpose advancing the cause of justice and equity.”

4. On the other hand, Ms. Latika Choudhury, learned counsel for respondent No.2-institute states that there is no anomaly in the schedule of admission and counselling. She states that the said schedules had been placed on the website and all the students were aware of the same. According to her, except students belonging to Delhi other Backward Class, all had to appear for counselling on 22nd July, 2014.

5. Ms. Choudhury further states that the averment with regard to Mr. Rawat is without any material particulars and is untrue. She points out that no designation of Mr. Rawat has been given.

6. Ms. Choudhury also draws this Court's attention to Clause 2.5 of the Admission Information Brochure which reads as under:-

"2.5 REPORTING AT NSIT FOR ADMISSION

*Candidates are required to report at the NSIT on the specified date and time (as per the Counselling schedule notified from time to time on the website <http://www.nsit.nic.in>) along with requisite admission fee in the form of a Demand Draft / Banker's Cheque and original and self-attested copies of documents (for documents, see **Para 2.8**). If a candidate does not report on the specified date and time along with all the requisite documents, his allotted seat shall be cancelled and the candidate shall not have any claim on the allotted seat, whatsoever."*

7. Ms. Choudhury states that the intent behind the aforesaid Clause is to ensure that students do not block seats in different institutions. She states that as petitioner did not appear for counselling on 22nd July, 2014, his candidature cannot be considered for allotment of any seat now.

8. Ms. Choudhury lastly states that there are many similar placed students and if any relief is granted to the present petitioner, it would result in the wait-listed candidates not getting any seat.

9. Having heard learned counsel for parties, this Court is of the view that schedule of admission and counselling is clear and categorical. Except students belonging to Delhi other Backward Class, all had to appear for counselling on 22nd July, 2014.

10. This Court is in agreement with the contention of learned counsel for respondent No.2 that the averment with regard to Mr. Rawat is vague and without any material particulars.

11. In any event, petitioner cannot rely on an alleged oral understanding contrary to the written admission schedule.

12. Also if the petitioner's contention of anomaly is accepted, then no counselling for any student could have been held on 22nd July, 2014.

13. The judgment relied upon by learned counsel for petitioner in the case of *Yatharth Gupta* (supra) offers no assistance to the petitioner as in the said case, it was held that if a student does not remain present for counselling on account of medical exigencies or other emergent situation beyond human control, then he should be given another opportunity to participate in the counselling.

14. However, in the present case neither any medical exigency nor any emergent situation beyond human control has been pleaded.

15. Consequently, the aforesaid judgment is inapplicable to the facts of the present case.

16. Moreover, in view of the Clause 2.5 referred to by learned counsel for respondent No.2, this Court is of the view that it cannot permit the petitioner to join the counselling at this stage.

17. Accordingly, present writ petition and application are dismissed, but with no order as to costs.

MANMOHAN, J

JULY 30, 2014

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