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

+ **W.P.(C) 6570/2014**

YUSRA HASHMI

..... Petitioner

Through: Mr. Ashok Bhasin, Senior Advocate
with Mr. R.K. Saini, Mr. Salman
Hashmi and Mr. Zeeshan Hashmi,
Advocates.

versus

UNIVERSITY OF DELHI & ORS. Respondents

Through: Mr. Mohinder J.S. Rupal, Advocate
for University of Delhi.

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Reserved on : 25th September, 2014

Date of Decision : 13th October, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the action of respondent-University in not giving admission to the petitioner against a vacant seat of MA (History) in South Campus for 2014-15 for which she was selected. Petitioner also prays for setting aside the order dated 11th September, 2014 by which Vice-Chancellor, University of Delhi, refused to grant her admission.

2. Mr. Ashok Bhasin, learned senior counsel for petitioner stated that candidates in earlier lists, that means, first, second, third, third supplementary, fourth and fourth supplementary lists had all been given three working days to complete their admission formalities, while students in fifth list which included the petitioner were given only two days. According to him, this action of respondent-University was arbitrary and discriminatory.

3. Mr. Bhasin further stated that in all the lists preceding the fifth list, whenever the third day was occurring on a non-working day, the third day to take admission was moved to the next working day. However, in the case of the petitioner herein the third day fell on a Sunday and as a result only two working days were given to complete admission formalities. Consequently, he submitted that there had been denial of equality.

4. Mr. Bhasin submitted that since 31st August, 2014 was a Sunday, petitioner was entitled to benefit of Section 10 of General Clauses Act, 1897 and was consequently, well within her right to complete the admission formalities on the next working day, namely, 1st September, 2014.

5. Mr. Bhasin also contended that the action of the respondent-University in rigidly adhering to closing of admissions on 31st August, 2014- a Sunday-reeked of arbitrariness and malafides.

6. In support of his submissions, Mr. Bhasin relied on the judgment of this Court in *Anuj Sharma & Ors. V.s University of Delhi, W.P.(C) 6933/2011* decided on **3rd October, 2011**. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

“8. The Courts have also consistently held that every endeavour by the University and all other institutions should be

made to fill all the seats as wastage of seats is not only at the cost of the public exchequer but at the cost of depriving a number of aspiring students struggling to get admission in coveted institutions and universities such as the Delhi University, which is a dream of many. Hence, considering the aforesaid circumstances, the respondent is hereby directed to hold a special counseling to fill the vacant 50 OBC after converting the said vacant 50 OBC seats into the general category in terms of the directions of the Hon'ble Apex Court in the matter of P.V. Indiresan (Supra). The said special counseling shall be conducted by the respondent university after duly notifying the candidates belonging to the general category through notice board and through their website. At least seven days time shall be given to the candidates through such a notice inviting them to participate in the said special counseling. The respondent is also directed to publish an advertisement to this effect in a national daily so that the candidates can be made aware that the admissions have yet not been closed so that not only the present petitioners but the other candidates standing higher in rank can try their luck to seek admission against the unfilled vacant seats. It is further directed that after filling the said 50 seats, the Faculty of Law shall conduct special classes for such students so that they can cover their curriculum to appear in their first semester examination. The attendance of such students shall also be reckoned from the date of their admission in the course and not from the date when the current academic session had begun.”

(emphasis supplied)

7. Mr. Bhasin also relied on judgment of the Supreme Court in ***Asha Vs. Pt. B.D. Sharma University of Health Sciences & Ors., Civil Appeal No. 5055/2012*** decided on **10th July, 2012**. The relevant portion of aforesaid Supreme Court judgment is reproduced hereinbelow:-

“22. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified

by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised.....”

(emphasis supplied)

8. Having perused the paper book, this Court is of the view that students applying under the first list are much more in number than those applying under the fifth list. The administrative load on the respondent-University in completing the procedural formalities for admissions in the fifth list cannot be compared with administrative load of the first list. Consequently, acceptance of Mr. Bhasin's submission would amount to treating ‘unequals as equals’.

9. In the opinion of this Court, petitioner is also not entitled to the benefit of Section 10 of the General Clauses Act, 1897 as the last date for completion of admission formalities was 30th August, 2014 - a working day- and not 31st August - a Sunday, as contended by the petitioner.

10. The relevant extract of the Supreme Court in **Asha Vs. Pt. B.D. Sharma University of Health Sciences & Ors.** (supra) indicating the issue and the rationale behind the decision is reproduced hereinbelow:-

“31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of

*merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer *Arti Sapru and Others v. State of J & K and Others* [(1981) 2 SCC 484]; *Chavi Mehrotra v. Director General Health Services* [(1994) 2 SCC 370]; and *Aravind Kumar Kankane v. State of UP and Others* [(2001) 8 SCC 355].”*

(emphasis supplied)

11. Consequently, the sine qua non for granting relief to a student is that delay, default or negligence should be attributable to the respondent-authorities. In the present case, no fault can be attributed to the respondents. Further, it cannot be said that the petitioner had been completely vigilant, proactive and attentive in pursuing her admission. Even a perusal of the paper book reveals that the petitioner herself claims to have been unable to personally visit the respondent-University on 29th August, 2014 to seek admission.

12. Moreover, as the last cut-off date for admission in DU was 31st August, 2014 and as the fifth list was issued on 28th August and uploaded on 29th August, students could and were given two days namely, 29th and 30th August, 2014 to complete the formalities. Keeping in view the 31st August deadline and the fact that 31st August was a Sunday, the only other option the respondent-University had was not to issue the fifth list. Accordingly, this Court is of the view that the action of the respondent-University in giving two days was to ensure compliance with the direction given by this Court in *Anuj Sharma & Ors. V.s University of Delhi* (supra).

13. To be noted that the last date of admission stipulated in Clause 3 of Ordinance II of the University has not been challenged in the present proceedings. In any event, this Court is of the opinion that two days are more than sufficient to complete the procedural requirements for admission.

14. Consequently, this Court is of the opinion that the decision of the respondent-University to issue the fifth list and to give two days to complete the formalities was legal, fair and reasonable.

15. Accordingly, present writ petition is dismissed.

MANMOHAN, J

OCTOBER 13, 2014

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