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

+ W.P.(C) 1820/2012

SURBHI SINGH

..... Petitioner

Through: Mr. Gyanendra Singh, Adv.

versus

THE GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

..... Respondent

Through: Ms. Priyanka Sharma with Ms. Shikha
Tandon, Advocates

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Date of Decision : 28th January, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The short issue that arises for consideration in the present case is whether the petitioner is entitled for refund of fee which she had voluntarily paid for seeking admission to the Guru Nanak Institute of Management where she was initially enrolled for the Masters of Computer Application (MCA) Program for the academic year 2010.

2. Learned counsel for the petitioner in support of the prayer for refund of fees, relies upon the judgement of the Madhya Pradesh High Court in *Shadma Amreen v. Jiwaji University through its Registrar, Gwalior (MP)* (Writ Petition No. 2220/10), decided on 13th August, 2010 wherein it has been held as under:-

“5. The respondent-University in its return stated that the case of the petitioner for refund of tuition fee has been considered by the Standing Committee of the Jiwaji University and the Standing Committee refused to refund the fee deposited by the petitioner on the ground that the petitioner made request for refund of fee after attending counselling as per the prospectus of Jiwaji University, Gwalior, if any candidate leaves the course after counselling in that eventuality only caution money would be refunded. The relevant clause of the prospectus is as under:-

“6.1 If any candidate leave the course before the last counselling day the fee will be returned to him /her after deducting 10% of the fees deposited by him/her, but in case he leave any course after the said date only caution money will be refunded.”

6. From the facts of the case, it is clear that the petitioner did not participate in the B.C.A. course although she did take admission in B.C.A. course. Thereafter, the petitioner got a seat in B.E. course in Electronics & Communication in Shriram College of Engineering and Management, Banmore. In the proceedings of the Standing Committee dated 5th November 2009, copy of which has been filed as Annexure R-1, a reference has been made of the order dated 03.07.2008 passed by the Commissioner, Higher Education, Bhopal. It has been mentioned in the order that in the semester system up to 30th June if the student had taken admission in any other professional course then after submitting a certificate in that regard the fee could be refunded after deducting an amount of Rs.100/-. From the aforesaid order issued by the Commissioner, Higher Education, it is clear that the petitioner is entitled to get refund of fee deposited by her for B.C.A. course because she had taken admission in B.E. course in Electronics & Communication in Shriram College of Engineering and Management, which is a professional course. The order issued by the Commissioner, Higher Education, Bhopal, is binding on the respondent-University.

3. On the other hand, learned counsel for the respondent-University relies upon a judgment of this Court in **Neha Sharma v. The Vice-Chancellor & Ors 118 (2005) DLT 518** wherein it has been held as under:-

“27. I am therefore, of the considered view that the petitioner is barred by the terms and conditions notified to her in the Information Bulletin. This Information Bulletin was available for sale from 17.4.2000. The petitioner accepted these terms and conditions and submitted her application form.

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29. In the instant case, the Information Bulletin set out the extent and amount of deduction at the time of a refund. The cut-off date has been provided in the Information Bulletin. There is no dispute that the action of the respondents is in accordance with the Information Bulletin. No legally sustainable ground of challenge to the respondents’ action has been made in the facts set out. In view of the findings of the Supreme Court of India in the judgments relied upon, the respondents were entitled to effect the deduction made in terms of the Information Bulletin in the instant case.”

4. In rejoinder, learned counsel for the petitioner states that the judgment of **Neha Sharma** (supra) has been passed without taking into account the UGC public notice dated 23rd April, 2007. The relevant portion of the said UGC public notice is reproduced hereinbelow:-

“3. The Ministry of Human Resource Development and University Grants Commission have considered the issue and decided that the Institutions and Universities, in the public interest, shall maintain a waiting list of students/candidates. In the event of a student/candidate withdrawing before the starting of the course, the waitlisted candidates should be given admission against the vacant seat. The entire fee collected from the student, after a deduction of the processing fee of not more than Rs.1000/- (one thousand only) shall be refunded and returned by the institution/University to the student/candidate withdrawing from the programme. Should a student leave after joining the course and if the seat consequently falling vacant has been filled by another candidate by the last date of submission, the Institution must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable.”

5. Upon a perusal of the paper book, this Court finds that the petitioner had participated in the Common Entrance Test examination held by the respondent-

university for admission in the MCA course on May 22, 2010. Prior to the first counselling session, the respondent-university had issued a notification dated 30th July, 2010 clearly stipulating the date of counselling, conditions for payment of fee as well as withdrawal of admission etc. In the notification dated 30th July, 2010, it was clearly mentioned that the fees of Rs. 58,000/- would be payable at the time of the counselling and out of the said amount, only Rs.8,000/- would be retained by the respondent-university as admission charges and the balance would be transferred to the Guru Nanak Management Institute.

6. Clause 8 (iii) of the notification dated 30th July, 2010 clearly stipulated that in the event, a candidate sought withdrawal of his/her admission granted in the first counselling, he/she had to make an application for the same on or before 20th August, 2010. Clause 8(iii) of the notification dated 30th July, 2010 reads as under:-

“(iii) No request for withdrawal of admission will be entertained after 5:00 p.m. of 20th August, 2010 unless it reached the officer of Joint Registrar (Academic) at Room No.108, Administrative Block, Guru Gobind Singh Indraprastha University, Delhi-110403, before the said date and time. Any dropout after this notified time and date will lead to the forfeiture of the full fee deposited by the candidate and no subsequent request for refund of fee will be entertained.”

(emphasis supplied)

7. After taking admission in the aforesaid institute, the petitioner for the first time, applied for withdrawal of her admission on 03rd September, 2010. Consequently, this Court is of the view that clause 8(iii) of the notification dated 30th July, 2010 is clearly applicable to the facts of the present case and the respondent-university as well as Guru Nanak Institute of Management were entitled to forfeit the full fee deposited by the petitioner.

8. The Madhya Pradesh High Court's judgment in *Shadma Amreen* (supra) is irrelevant as the said judgment is primarily based on the order dated 3rd July, 2008 passed by the Commissioner, Higher Education, Bhopal-which does not apply to the present case.

9. Further, in the opinion of this Court, the UGC public notice dated 23rd April, 2007 offers no assistance to the petitioner even though the same had been issued after passing of the judgment of *Neha Sharma* (supra) as in the present case, the petitioner seat has remained vacant. The UGC public notice only states that if the vacant seat is filled up by another candidate, then the University and college must return the fees collected from the student after making proportionate deduction of the fees and expenses that would be payable by the student for the time he/she was enrolled in the said college and university.

10. Admittedly once the second counselling session starts, no further seat can be made available for admission. Any seat that falls vacant after the second counselling commences, remains vacant for the entire academic year of the respective course and the respondent-University cannot fill such a seat.

11. Consequently, in the present case, as the petitioner's seat has gone vacant and no student was enrolled in place of the petitioner in accordance with the policy of the respondent-University, this Court is of the view that the petitioner's reliance on the UGC public notice dated 23rd April, 2007 is contrary to facts and untenable in law. Accordingly, the present writ petition is dismissed but with no order as to costs.

MANMOHAN, J

JANUARY 28, 2014
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