

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

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Date of decision: 11th November, 2014

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LPA No.735/2014

MS. YUSRA HASHMI

..... Appellant

Through: Mr. R.K. Saini with Mr. S.A. Hashmi,
Mr. Salman Hashmi & Mr. Zeeshan
Hashmi, Advs.

Versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Ms. Y. Phazang, Adv. for Mr. M.J.S.
Rupal, Advs. for R-1.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 13th October, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.6570/2014 preferred by the appellant.

2. We have heard the counsel for the appellant in detail on the aspect of entertaining this appeal.

3. The writ petition from which this appeal arises was filed impugning the order dated 11th September, 2014 of the Vice Chancellor of the respondent No.1 University of Delhi rejecting the representation of the appellant / writ

petitioner for condoning the delay of one day in seeking admission to the MA (History) course in South Campus for the academic year 2014-15 and seeking a direction to the respondent No.1 University to so admit the appellant.

3. The factual position is as under:-

- (i) The appellant / writ petitioner had appeared in the test held by the respondent No.1 University for admission to the said course and secured 41 marks therein. The name of the appellant did not figure in the first, second, third and fourth admission lists published by the respondent No.1 University. The respondent No.1 University ultimately on 28th August, 2014 published the fifth admission list and in which the name of the appellant figured at serial No.1. According to the appellant, the said fifth admission list was uploaded on the website of the University only on 29th August, 2014 and gave only two days time i.e. of 29th & 30th August, 2014 to the candidates whose name figured therein to seek admission and complete the formalities therefor. The appellant admittedly did not approach the University, neither on 29th August, 2014 nor on 30th August, 2014. 31st August, 2014 was a Sunday. The appellant approached the University on 1st September, 2014

when she was refused admission on the ground that the last date fixed for admission was 31st August, 2014. The appellant made a representation dated 1st September, 2014 supra to the Vice Chancellor of the University seeking condonation of one days delay in seeking admission.

- (ii) The appellant also filed W.P.(C) No.5802/2014 in this Court which came up for hearing on 3rd September, 2014. When during the hearing thereof the appellant confined the relief therein to a direction to the Vice Chancellor of the respondent No.1 University to decide the representation filed by the petitioner on 1st September, 2014. Accordingly, the said writ petition was disposed of with a direction to the Vice Chancellor to decide the said representation within one week. The Vice Chancellor has vide order dated 11th September, 2014 (supra) rejected the said representation, for the reasons; i) that as per Clause 3 of Ordinance II of the University, all provisional admissions to postgraduate courses shall be finalized by the Standing Committees concerned not later than 31st August of the year in which admissions are sought and the provisional admissions not finalized by the said

date shall automatically be annulled; ii) that vide Notification dated 6th August, 2014 also, all faculties / departments / institutions were notified that postgraduate admissions are to be finalized by 31st August, 2014 and no admission will be allowed beyond the said date under any circumstances; and, iii) thus the representation of the appellant for one day's extension in the last date could not be acceded to.

4. It was *inter alia* the contention of the appellant before the learned Single Judge that the respondent no.1 University while publishing the first to the fourth admission lists had each time given three working days time for seeking admission and had thus discriminated in prescribing only two days time while publishing the fifth list. The learned Single Judge rejected the said contention for the reason that students applying under the earlier lists were much more in number than those applying under the fifth list and thus the two situations were not at par for a case of discrimination to be made out.

5. Another argument raised before the learned single Judge was that since 31st August, 2014 was a Sunday, by virtue of Section 10 of the General Clauses Act, 1897, the last date for admission was in fact 1st September, 2014 and on which date, the appellant had sought admission but was wrongly refused. The

learned Single Judge rejected the said contention also holding that in the fifth list, the last date prescribed for seeking admission was 30th August, 2014 which was a working day and merely because the University had stipulated 31st August, 2014 as the last date, did not compel the respondent University to continue the admissions till then.

6. The learned Single Judge also relied on *Asha Vs. Pt. B.D. Sharma University of Health Sciences* (2012) 7 SCC 389 holding that authorities cannot grant admission beyond the cut-off date which is specifically postulated, except where no fault is attributable to a candidate and the candidate is denied admission for arbitrary reasons and held that in the present case no fault could be attributed to the respondent No.1 University and the fault indeed was of the appellant in not approaching the University on 29th and 30th August, 2014.

7. The counsel for the appellant has raised the same arguments before us also but we do not find any error in the reasoning given by the learned Single Judge in dealing with the same.

8. The counsel for the appellant has also contended that the appellant, upon telephonically approaching the University on 29th August, 2014 was informed that no fifth list will be posted and that admissions had been closed and thus could not approach the University.

9. We however do not find the said argument to be borne out from the pleadings in the memorandum of appeal or the writ petition. The appellant in paragraph 10 of the writ petition has pleaded that the fifth list though dated 28th August, 2014 was uploaded on the website of the respondent University only on 29th August, 2014 and in this list the name of the appellant was at serial No.1. The appellant thereafter in paragraph 11 of the writ petition has pleaded that she was unwell on 29th August, 2014 and therefore made the phone call aforesaid. The appellant in paragraph 12 of the writ petition has pleaded, “That however as stated above, the fifth admission list was posted on the Delhi University website on 29.08.2014” It is thus not the plea of the appellant that she did not know of the fifth list dated 28th August, 2014, even if uploaded on the website on 29th August, 2014 or that inspite of telephonic denial of the respondent University on 29th August, 2014, how she learnt of the same, for her to approach the respondent University on 1st September, 2014. In fact the appellant in her representation dated 1st September, 2014 also did not state that she was so misguided by the tele-conversation and rather stated that she could not apply on 29th & 30th August, 2014 because of illness.

10. The said argument is thus clearly an afterthought and false. In fact in the writ petition there is no explanation, for the appellant not approaching the

University on 30th August, 2014 and the reason given is only of illness on 29th August, 2014. The appellant is not entitled to any discretionary remedy as a remedy under Article 226 is, for the reason of taking a false plea which is not borne out from the representation dated 1st September, 2014, being the first missive from the appellant on her own.

11. We may also add that we entertain doubts as to the applicability of the Section 10 of the General Clauses Act. The same prescribes for the next working day to become the last day in the event of the last day prescribed being a holiday, where any act or proceeding is directed or allowed to be done or taken 'in any Court or office' on a certain day or within a period prescribed, by any central Act or Regulation. Ordinance II of the respondent University in Clause 3 thereof provides that admissions shall be finalized not later than such last date as may be prescribed by the Academic Council from time to time. The last date of 31st August, 2014 thus appears to have been prescribed by the Academic Council of the respondent No.1 University and not by the Delhi University Act, 1922 or any Regulation. Also, Section 10 is applicable only where the time prescribed is for doing a thing in 'any court or office'. We doubt that the time prescribed for seeking admission in the University can be said to be for doing anything in any office. We have not found any decided

case on the subject, though mention may be made of ***Mohd. Ayub Vs. State of U.P.*** (2009) 17 SCC 70 applying the principle contained in Section 10 to hold that the formalities for recruitment were completed within time and to ***HUDA Vs. Dr. Babeswar Kanhar*** (2005) 1 SCC 191 where the principle was held to be applicable to the date prescribed for submitting an application for allotment of a plot of land, inspite of Section 10 being held to be not applicable.

12. The counsel for the appellant had also contended that since there is a vacant seat, the appellant be admitted thereto.

13. The aforesaid is also no longer *res integra*. We have recently in ***Rajeev Kumar Vs. Union of India*** MANU/DE/1752/2014 reiterated that at the cost of filling up of the seats, admission process cannot be allowed to be unended. Though the delay in the present case is of one day only but if we were to condone the same, we would have no reason to deny in any other case, admission to a candidate delayed by two days and so on.

14. There is thus no merit in this appeal and the same is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

NOVEMBER 11, 2014/‘gsr’..