

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1633 of 2014(O&M)

Date of decision:4.5.2015

Parvinder Kumar

....Appellant

VERSUS

Maharshi Dayanand University and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Suresh Kumar Redhu, Advocate for the appellant.

Mr. Vinod S. Bhardwaj, Advocate for respondent No.3.

HEMANT GUPTA, J.(Oral)

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 10.09.2013 wherein the writ petition filed by the appellant was dismissed.

When the appeal came up for hearing before this Court on 29.09.2014, the following contention of the appellant was recorded:-

“Though the learned Single Judge has rightly held that the appellant was ineligible for subject admission on the cut off date as on 31.08.2012, however, the appellant’s contention is that since respondent No.3-Institute granted admission to him knowingly fully well that he was ineligible, the admission fee taken from him, which is more than Rs.1 lac, ought to have been ordered to be refunded.”

Learned counsel for the respondent has pointed out that the said contention is incorrect as the appellant has executed an affidavit (Annexure R3/1) in August, 2013 before the grant of

admission that he is depositing the admission fee and in case there is any objection, he shall be responsible for the same and Institution will have no responsibility. The affidavit as translated by the respondent reads as under:-

“1. That I am aware that as on date I do not fulfill the required qualification for admission in B.Tech Ist year CSE in Somany Institute of Technology and Management because I have reappear in Physics.

2. That I am depositing my admission fee. In case of any objection with respect to my qualification from the university, I shall be responsible for the same and the Institute shall have no responsibility. And I will not take any legal action against the Institute and will not seek any registration fee or any other compensation.

3. That I state on oath that I have executed my affidavit in my full senses and I have not withheld any information. I am executing the statement in presence of my father Sh. Surinder Chauhan and mother Smt. Kusum Lata who have also verified the same.”

Learned counsel for the appellant has argued that such affidavit was taken by respondent-Institute being in a dominant position. Therefore, the argument of learned counsel for the appellant is that such affidavit cannot be taken into consideration to deny claim of the appellant to seek refund of the fee deposited.

We have heard learned counsel for the parties and find that the argument of the appellant before learned Single Bench or before this Court in Letters Patent Appeal was not that the respondent-Institute was unfair being in dominant position. The case set up was of lack of knowledge of the appellant in respect of his eligibility conditions while seeking admission to the Degree course. The affidavit filed shows awareness of the appellant in respect of the

ineligibility and also the fact that he is being admitted subject to the decision of the University.

Since the petitioner was aware of the risk in admission and the fact that he has deposited fees with his eyes open, we do not find that the appellant can be permitted to claim refund of fee deposited by the appellant voluntarily in understanding of the complete facts.

Consequently, we do not find any error in the order passed by learned Single Bench.

Dismissed.

(HEMANT GUPTA)
JUDGE

MAY 4, 2015
‘D. Gulati’

(LISA GILL)
JUDGE