

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

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Date of decision: 27th May, 2015

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LPA No.588/2014

INDIRA GANDHI NATIONAL OPEN UNIVERSITY.. Appellant

Through: Mr. Aly Mirza and Mr. Kulish
Tanwar, Advs.

Versus

PRESIDENCY EDUCATIONAL TRUST

..... Respondent

Through: Mr. Ajay Kapur, Sr. Adv. with Mr.
Harshbir Singh Kohli and Mr. Dinesh
Kumar, Advs.
Mr. Sanjeev Bhandari & Mr. Manoj
Bhandari, Advs. for CBI.

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 31st July, 2013 of the learned Single Judge of this Court in W.P.(C) No.4297/2012 preferred by the respondent / writ petitioner. The appeal is accompanied with an application being CM No.14793/2014, for condonation of 336 days delay in re-filing thereof. Notice of the appeal as well as the application for condonation of delay in re-filing was issued. The respondent / writ petitioner has filed a reply to the said application, opposing condonation of the delay in re-filing. We

heard the counsel for the appellant University as well as the senior counsel for the respondent / writ petitioner on 21st May, 2015 and reserved judgment.

2. The appellant University had entered into a Memorandum of Understanding (MOU) dated 17th September, 2007 with the American Hotel and Lodging Educational Institute (AHLEI) for working together to launch a three years programme titled B.A. International Hospitality Administration. In pursuance thereto, the appellant University entered into an MOU dated 26th May, 2008 with the respondent / writ petitioner whereunder the appellant University authorized the respondent / writ petitioner for a period of five years and on the terms and conditions contained therein to conduct the said programme by imparting face to face education to the students opting to enroll with the respondent / writ petitioner for the said programme.

3. However the Board of Management of the appellant University in its 113th Meeting held on 31st May, 2012 decided to rescind the said MOU entered into with the respondent / writ petitioner, being of the view that the appellant University was neither entitled, under its statute and ordinances to enter into such an MOU, or to impart face to face education as the mandate of the appellant University is to impart only distance learning.

4. A communication dated 31st May, 2012 was sent to AHLEI in this regard, also intimating that all new admissions to the course would be kept in abeyance. However communication thereof to the respondent / writ petitioner was made only on 12th June, 2012 and aggrieved wherefrom the writ petition from which this appeal arises was filed.

5. We may at this stage record that the appellant University had entered into similar MOUs with others as well including in several other courses / programmes for imparting face-to-face education. All the said MOUs with others also, in the meeting dated 31st May, 2012 were agreed to be rescinded and were rescinded and the others also filed W.P.(C) Nos.5789/2012, 6021/2012, 6399/2012, 6495/2012, 6016/2012, 7521/2012, 7046/2012, 7045/2012 and 7044/2012 in this Court.

6. The writ petition filed by the respondent / writ petitioner and from which this appeal arises came up first before the learned Single Judge on 20th July, 2012 when the contention of the counsel for the respondent / writ petitioner was that the respondent / writ petitioner had already admitted students and in case the admissions were kept in abeyance, the students so admitted would be left without any alternative admission.

7. In response thereto the counsel for the appellant University appearing on advance notice stated that the appellant University had no objection with regard to the students admitted upto 12th June, 2012. Accordingly, while issuing notice of the petition, the learned Single Judge directed that no further admissions be made, from that date onwards i.e. 20th July, 2012, by the respondent / writ petitioner.

8. Vide subsequent orders dated 16th April, 2013, 25th April, 2013 and 8th May, 2013 in the writ petition from which this appeal arises, the respondent / writ petitioner was directed to satisfy the appellant University about the students admitted in the institute of the respondent / writ petitioner in the aforesaid course / programme in the academic year 2012-2013. When the writ petition came up before the learned Single Judge on 16th May, 2013, the counsel for the appellant University again stated that the appellant University had no objection with regard to the students admitted upto 12th June, 2012 and further stated that all the students admitted upto 12th June, 2012 would be allowed to appear in the examination and complete the course. However it appears, that between 12th June, 2012 and 20th July, 2012 i.e. when the learned Single Judge directed that no further admissions be made, the respondent / writ

petitioner had admitted another nine students. Qua the said nine students, the appellant University took a stand that they would not be allowed to appear in the examination. The learned Single Judge however directed the appellant University to take a realistic and sympathetic view vis-à-vis the said nine students also.

9. The other writ petitions (supra) were decided by the learned Single Judge vide judgment dated 23rd July, 2013. The decision of the Board of Management of the appellant University to rescind the MOU was upheld. However finding that though the Board of Management of the appellant University had taken a decision to rescind the MOU in the meeting held on 31st May, 2012 but no communication thereof was sent to the writ petitioners (in the other petitions) till after the students for the academic year 2012-2013 were admitted, the learned Single Judge directed that students genuinely admitted in the year 2012-13 would be allowed to complete the course and take examination etc.

10. The writ petition from which this appeal arises came up before the same learned Single Judge on 31st July, 2013 when the learned Single Judge following the judgment dated 23rd July, 2013 in the other writ petitions

disposed of the writ petition filed by the respondent / writ petitioner also with a direction that the students genuinely admitted to the respondent / writ petitioner institute for the academic year 2012-13 would be allowed to complete the course and take the examination etc. The learned Single Judge in the impugned judgment has noticed that the appellant University even while addressing the communication dated 31st May, 2012 to AHLEI, neither advertised in the newspapers that it had directed the institutes with which it had entered into the MOUs to keep the admissions for such programmes in abeyance nor issued any public notice warning the students to the said effect and as a result whereof the students continued to seek admission to the said institutes without knowledge of the decision of the appellant University to rescind the MOUs. The learned Single Judge has reasoned that since the appellant University itself had prematurely terminated the MOU, the interest of the students who had already taken admission had to be safeguarded.

11. The appellant University is aggrieved from the direction in the impugned judgment vis-à-vis the nine students admitted between 12th June, 2012 and 20th July, 2012.

12. Though this appeal was filed after a long delay and with an application for condonation of delay in re-filing thereof but notice were issued because LPAs No.755/2013, 756/2013, 757/2013, 758/2013, 759/2013, 760/2013, 761/2013, 762/2013 & 763/2013 preferred by the appellant University against the judgment dated 23rd July, 2013 of the learned Single Judge in the other writ petitions had been admitted and the operation of the judgment dated 23rd July, 2013 (and on which the impugned judgment dated 31st July, 2013 is premised) had been stayed.

13. The reason given by the appellant University for the delay in re-filing is, that after the appeal was taken back from the registry of this Court to remove objections, the file thereof got tagged along with some other files and went missing.

14. The respondent / writ petitioner has opposed the application for condonation of delay by contending:

- (a) that since the appellant University did not comply with the impugned judgment by conducting the examinations in November, 2013, CCP No.104/2014 was filed and in which the appellant University had been seeking time to file reply;

- (b) that the appellant University was thus fully aware that no appeal in the said case has been filed and still did not take any action for tracing the missing appeal; and,
- (c) it is thus not as if the file of the appeal had gone out of horizon of the appellant University; and the appellant University had notice that it was in contempt of the judgment dated 31st July, 2013 of the learned Single Judge and that there was no stay thereof.

The senior counsel for the respondent / writ petitioner has also argued that the appellant University is thereby playing with the career of the said nine students.

15. We may at this stage further record that the LPAs No.755/2013, 756/2013, 757/2013, 758/2013, 759/2013, 760/2013, 761/2013, 762/2013 & 763/2013 preferred against the judgment dated 23rd July, 2013 aforesaid were also listed before us on 21st May, 2015 when we reserved judgment in this appeal. However we were informed that none of the institutes therein were left with any students qua which the directions of the learned Single Judge in the judgment dated 23rd July, 2013 impugned in those appeals were required to be

complied. Accordingly, those appeals were on 21st May, 2015 disposed of as infructuous, leaving the question of law open.

16. The first aspect to be considered by us is of delay in re-filing the appeal. The senior counsel for the respondent / writ petitioner has argued that considering the nature of the controversy, no case for condonation the delay is made out. Reliance in this regard is placed on *Postmaster General Vs. Living Media India Ltd.* (2012) 3 SCC 563, *P.K. Ramachandran Vs. State of Kerala* (1997) 7 SCC 556 *Ashok Chand Singhvi Vs. University of Jodhpur* AIR 1989 SC 823, *Miss Sangeeta Srivastava Vs. Prof. U.N. Singh* AIR 1980 Delhi 27 and *Municipal Corporation of Delhi Vs. International Security & Intelligence Agency Ltd.* (2004) 3 SCC 250.

17. Having considered the rival submissions, we are of the view that a case for condoning the delay in re-filing the appeal is made out. Supreme Court in *Indian Statistical Institute Vs. Associated Builders* (1978) 1 SCC 483 held that if initial institution is within time, Section 5 of the Limitation Act, 1963 has no application. The Courts are liberal in condoning the delay in re-filing. Reference in this regard can be made to *Competent Placement Services (Regd.) Vs. Delhi Transport Corporation* MANU/DE/3069/2010(DB).

The reason therefor is that once a litigant has got an appeal prepared and filed the same, if it is returned under some objections, the fault thereof is generally not of the litigant but of the advocate or the paralegal staff and similarly the delay in re-filing is also not of the litigant but of the advocate or of the paralegal staff. The litigant should not be saddled for the default of his agent.

18. That brings us to the question whether the direction in the impugned judgment for the students admitted between 12th June, 2012 and 20th July, 2012 being also allowed to complete the course requires any interference by us in exercise of letters patent jurisdiction.

19. We may at the outset highlight that it is not the case of the appellant University that the nine students qua which the dispute relates have not been found by it to have been genuinely admitted to the respondent / writ petitioner institute. We therefore proceed on the premise that the said nine students were also genuinely admitted by the respondent / writ petitioner institute between 12th June, 2012 and 20th July, 2012.

20. Though the appellant University vide its communication dated 31st May, 2012 had asked AHLEI to keep the admissions to the academic year 2012-13 in

abeyance but the appellant University conceded that since it had not communicated so to the respondent / writ petitioner institute till 12th June, 2012, it would allow the students admitted till 12th June, 2012 to complete the course. We were during the hearing informed that four students were admitted till 12th June, 2012 and the appellant University is allowing them to complete the course / programme which is of three years duration. The senior counsel for the respondent / writ petitioner of course states that the appellant University is holding examinations for the said four students also after much cajoling and delay. It is informed however that the nine students aforesaid have not been allowed to take the examinations.

21. The question which arises is whether the position of the nine students admitted between 12th July, 2012 and 20th July, 2012 is any different from the four students admitted prior to 12th July, 2012. In our opinion no. The four students were admitted after a decision to rescind the MOU had been taken and which decision in turn was premised on the appellant University being not entitled under its statute to enter into the MOU or to impart face to face education. We have wondered that when the appellant University has allowed four students to complete the course even after realization dawned on the

appellant University that its action of entering into the MOU with an outside agency for imparting face to face education and awarding Degrees for the previous several years was without any sanction, why it should object to the other nine students. The only difference between the four students admitted before 12th June, 2012 and the nine students admitted after 12th July, 2012 is that while till 12th June, 2012 the respondent / writ petitioner institute had no inkling even of the appellant University reneging from the MOU, on 12th June, 2012 it had been informed so.

22. We are of the opinion that no fault can be found with the action of the respondent / writ petitioner institute of not putting the further admission immediately on hold inspite of receipt on 12th June, 2012 of the communication dated 31st May, 2012 of the appellant University. By the said communication, the appellant University informed AHLEI that it had taken a decision 'to review the MOU between appellant University and AHLEI in the face of queries raised by the Finance Department of the appellant University as well as the remarks of the Academic Council of the appellant University and asked AHLEI to furnish certain information'. Thereafter, it was mentioned “further, new admission in

the programme will be kept in abeyance till the time Committee places its report to the School Board”.

23. The aforesaid communication is to be seen in the light of the fact; i) that the said communication was not directed to the respondent / writ petitioner and respondent / writ petitioner was not asked to immediately stop further admission; ii) the MOU had been in operation for at least four years prior to the said communication and whereunder students were being admitted by the respondent / writ petitioner institute; iii) it was the time of admissions and process of admission had already begun; iv) though the appellant University, prior to entering into the MOU dated 26th May, 2008 had entered into MOU dated 17th September, 2007 with AHLEI and the MOU dated 17th September, 2007 of the appellant University with AHLEI is mentioned in the MOU dated 26th May, 2008 of the appellant University with the respondent / writ petitioner but it is not as if the respondent / writ petitioner had no privity with the appellant University; v) the relationship of the appellant University with the respondent / writ petitioner was independent of the relationship of the appellant University with AHLEI; vi) it was the respondent / writ petitioner and not AHLEI which was making admissions; vii) thus if the appellant University

wanted respondent / writ petitioner to stop the admission process, the appellant University ought to have asked the respondent writ petitioner to stop admitting students and which was not done; and, viii) even as per the letter dated 31st May, 2012 no final decision had been taken; the MOUs were only being reviewed; there is nothing to show when the decision was taken; from the records relating to the other writ petitions / appeals, it appears that such a decision was taken some time in August, 2012. Thus, no fault can be found with the admission of the said nine students also.

24. We therefore do not find any reason to treat the aforesaid nine students any differently from the other four students whom the appellant University is permitting to complete the course.

25. Resultantly, the appeal is dismissed. The appellant University to now forthwith diligently comply with the directions of the learned Single Judge without causing any further harm to the said nine students.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 27, 2015/‘gsr’