

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

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Date of decision: 11th August, 2015

+ W.P.(C) No.6985/2015 & CM No.12808/2015 (for stay)

SACHIN KATYAL

..... Petitioner

Through: Mr. Varun Dhingra, Adv.

versus

UNIVERSITY OF DELHI & ANR

..... Respondent

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

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition impugns the procedure prescribed by the respondents University of Delhi for admission to Super-Specialty (DM/M.Ch.) courses and seeks mandamus directing the respondents University to admit the petitioner to the M.Ch. course 2015-2018.

2. Notice of the petition was issued on 23rd July, 2015 and since the second round of counselling was scheduled to be held on the very next date i.e. 24th July, 2015 it was directed that the petitioner, without prejudice to the respective rights and contentions be permitted to participate therein so that by the next date it could be known whether the petitioner at all has a chance

for admission or not. On the next date of hearing it was informed that instead of allowing the petitioner to participate in the second round of counselling the respondents University of Delhi had deferred the second round of counselling to second week of August, 2015. Counter affidavit has been filed by the respondents University of Delhi. The counsels were heard on 6th August, 2015 and judgment reserved.

3. The petitioner is an aspirant for admission to M.Ch. course in Paediatric Surgery in Maulana Azad Medical College affiliated to the respondents University. He has in the Entrance Test held for the said admission achieved Rank '8' but was, in the counselling held on 10th July, 2015, not considered for admission owing to having not fulfilled the criteria laid down in Clause 2.3.3 of the Bulletin of Information published by the respondents University for admission to Super-Speciality (DM/M.Ch.) courses for the session 2015. Clause 2.3.3 requires a candidate for admission to the said course to have passed the Post-Graduate (MD/MS) examination on or before 30th June, 2015.

4. The petitioner claims to have done his Master of Surgery (M.S.) from M.K.C.G. Medical College, Behrampur, Orissa but the result of the final

examination taken in the month of May, 2015 wherein, has been declared only on 13th July, 2015. The said University however, on the request of the petitioner, sent the result of the petitioner, even prior to the declaration thereof on 13th July, 2015, in confidence, to the respondent University.

5. It is the contention of the petitioner that Clause 2.3.3 of the Bulletin of Information supra merely requires 'passing the M.S. examination' before 30th June, 2015 and which the petitioner had done. It is contended that the requirement of the said Clause is not of the result 'having been declared'. It is also the contention of the petitioner that had the respondents University announced the result of the Entrance Test before the 30th June, 2015, as was provided for in its Bulletin of Information, the confidential result also would have been informed before 30th June, 2015. It is yet further argued that the declaration of result is not in the hands of the petitioner as a student the petitioner ought not to be made to lose one year inspite of having qualified for admission.

6. It was the contention of the counsel for the respondents University during the hearing on 23rd July, 2015, i) that the date of 30th June, 2015 had been fixed as per the order dated 6th July, 2012 of this Court in W.P.(C)

No.3785/2012 titled *Jayanta Bain Vs. Guru Gobind Singh Indraprastha University*; and, ii) that another candidate having “Rank 4” i.e. ahead of the petitioner had also not been called for the second round of counselling then scheduled for 24th July, 2015 for the same reason. However, after perusing the said order dated 6th July, 2012 and finding that the same was not of adjudication by this Court but was merely of extension of the date then provided of 31st May, 2012 for clearing the qualifying examination to 30th June, 2012, that too with the consent of the parties, the said contention was rejected observing that the date of 30th June, 2012 could not be said to be sacrosanct for the said reason. To ensure that the petitioner does not steal a march over others meted out the same treatment by the respondents University, while directing the participation as aforesaid of the petitioner in the second round of counselling, the respondent University was directed to inform other candidates, similarly placed as the petitioner, also to participate in the counselling then scheduled on 24th July, 2015.

7. On 23rd July, 2015, going through the Bulletin of Information of the respondents Delhi University it was also found that the same, in the matter of admission to certain other courses/programmes, provides for a procedure of making provisional admission subject to the result of qualifying examination

being submitted by a subsequent cut-off date. The respondents University was as such directed to disclose as to why the same procedure had not been adopted for the subject course.

8. The respondents University has contested the petition contending that; (i) the sale of Bulletin of Information started on 17th April, 2015 and closed on 11th May, 2015; the last date for receipt of applications also was 11th May, 2015; (ii) Clause 1.3 of the Bulletin of Information required the candidates to go through the same carefully and Clause 1.15 provides for the decision of the Post Graduate Admission Committee being final in case of any dispute subject to the appeal thereagainst to the Vice Chancellor of the University; Clause 2.3.3. unequivocally provides that for being eligible for admission, the applicant must have passed the Post Graduate (MD/MS) examination on or before 30th June, 2015; (iii) the petitioner submitted his admission form being aware of the Clause aforesaid; (iv) the result of the petitioner the Post Graduate examination (qualifying examination) was admittedly not declared by 30th June, 2015; (v) the petitioner and another similarly placed candidate were vide letter dated 6th July, 2015 of the respondents University informed that they are not eligible for admission; (vi) the petitioner has intentionally suppressed the letter dated 6th July, 2015 and

not even challenged the same; (vii) the first counselling was held as scheduled on 10th July, 2015; the petitioner and others similarly placed as him were allowed to participate therein since sometimes the candidates are able to bring the hard copy of the result from their respective institutions / universities in order to show that the result was declared on or before 30th June, 2015; (viii) however the petitioner and four other candidates were not able to show that their result of the Post Graduate examination was declared by 30th June, 2015 and were therefore not given admission and their candidature cancelled forthwith; (ix) as per Clause 2.7.3 of the Bulletin of Information, if any vacancy in a course/discipline arises on account of the candidate offered and granted admission not joining the same or leaving after joining, the vacant seat would be offered in the second counselling to the candidates from the waiting list according to merit; (x) since the petitioner is not in the waiting list, his candidature having already been cancelled, he cannot attend the second round of counselling; this waiting list was put on the website of the respondents Delhi University on 21st July, 2015 and which also has not been challenged by the petitioner; (xi) that the challenge by the petitioner only to Clause 2.3.3 and that too only on 23rd July, 2015 when the second counselling was due to be held on 24th July,

2015 is not maintainable; and, (xii) of the eight seats available in M.Ch., Paediatric Surgery, seven have already been filled up in the first counselling itself and only one seat remains to be filled up in second counselling out of the wait listed candidates.

No reply has been given to the query raised and recorded in the order dated 23rd July, 2015 and mentioned in para 7 above.

9. The counsel for the respondents University, in addition to the aforesaid, during the hearing referred to *Mridul Dhar Vs. Union of India* (2005) 2 SCC 65 to contend that the Supreme Court, for Super Specialty courses, has prescribed, i) the last date for declaration of the result of the qualifying examination / entrance examination as 30th June; ii) for the first round of counselling / admission to be over by 25th July; iii) the last date for joining the allotted college and course as 31st July; iv) the second round of counselling wherever permissible from waiting list only; and v) no second counselling has been prescribed for Super Specialty courses. Reliance was also placed on *Priya Gupta Vs. State of Chhattisgarh* (2012) 7 SCC 433 to contend that the schedule so prescribed has the force of law and is not to be violated.

10. Clause 2.3.3 supra is as under:-

*“2.3.3 The candidate must have passed the Post-Graduate (MD/MS) examination, as per details mentioned below (in the light of the Hon’ble High Court order dated 06th July, 2012 in the matter of **Jayanta Bain Vs. University of Delhi** [W.P.(C) No.3785/2012], on or before Tuesday 30th June, 2015 of the University of Delhi or any other examination recognized equivalent thereto by the University of Delhi and Medical Council of India.”*

11. It was as such enquired from the counsel for the respondents University whether a candidate, who has taken the qualifying examination and who has also ‘passed’ the same before 30th June, 2015 but whose result has not been declared for whatsoever reason, would be treated as “pass” within the meaning of the aforesaid Clause.

12. The answer was in the negative. It was contended that the candidate cannot be treated as ‘pass’ till the result has been ‘declared’.

13. It being the case of the petitioner that though the M.K.C.G. Medical University from which he has taken the qualifying examination declared the result only on 13th July, 2015, had on the request of the petitioner sent the result in confidence to the respondents University of Delhi prior thereto, the date on which the said result was sent in confidence was enquired.

14. Though the said date was not available but it was informed that it must have been after 30th June, 2015 only inasmuch as the request therefor was made only on 5th July, 2015. The counsel for the petitioner of course contended that had the respondents University of Delhi declared the result of the entrance examination by 30th June, 2015 as also prescribed in ***Mridul Dhar*** supra instead of on 3rd July, 2015 as was done, he would have asked the M.K.C.G. Medical University from which he has passed the qualifying examination, to send the result in confidence before that. The counsel for the respondents University however contended that even if the result of the qualifying examination in confidence had been received prior to 30th June, 2015, the same having not been declared would not have been considered.

15. I may in this regard notice Clause 2.4.3 of the Bulletin of Information though attention thereto was not drawn by either of the counsels. The same is as under:-

“2.4.3 The candidate, who has not passed qualifying examination (MD/MS/DNB) at the time of submitting the application and is likely to pass the qualifying examination on or before 30th June, 2015, must submit the attested copies of the certificates as mentioned at Sr. No.6,7 & 8 in Clause – 2.4.2 latest by 30th June, 2015, failing which their candidature will not be considered.”

The counsel for the respondents Delhi University also stated that what was submitted in confidence by the M.K.C.G. Medical College, Behrampur, Orissa from which the petitioner has done the qualification examination was the mark sheet and not the result.

16. The respondents University as Annexure R-3 to its counter affidavit has filed a Merit List of candidates for counselling to be held on 10th July, 2015. The same was obviously prepared after the declaration of result on 3rd July, 2015 of the entrance test and before the 1st round of counselling on 10th July, 2015. The petitioner is shown as having Rank 8, in the said list. However against the name of the petitioner as also names of rank Holders 4, 6 to 14, 16, 17 and 20 the words “Required MS Degree and Attempt Certificate” are mentioned. It is obvious therefrom that the respondents University, though as per Clause 2.4.3 supra of its bulletin of information required submission of result of qualifying examination by 30th June, 2015, accepted the same till 10th July, 2015, as also expressly admitted in the counter affidavit. The letter dated 6th July, 2015 is inexplicable in the said context. I also wondered that if the result could be accepted till first round of counselling, it could be so accepted till second round also. The counsel for the respondents University explained that only if the result submitted by

10th July, 2015 showed to have been declared by 30th June, 2015, is the candidate considered for admission. It was further explained that the second counselling is done only from the waiting list prepared of candidates during the first counselling and thus the factum of the result of the petitioner having been declared by the date of the second counselling is irrelevant. Attention in this regard was drawn to Clause 2.7.3 of the Bulletin of Information which is as under:-

“2.7.3 Counselling for each course/discipline would be held separately i.e. discipline wise. If the course/discipline is available, in more than one Institution the candidate would make his choice in regard to the Institution, subject to availability as per merit. He would accordingly be issued an admission/allotment letter. He should join the course and Institution within the date specified.

If any vacancy in a Course/Discipline arises on account of the candidate offered admission and not joining the same or leaving the course after joining, these (vacant seats) would be offered in the 2nd Counselling to the candidates from the waiting list according to the merit. The matter of holding the 2nd Counselling would be the same as would be for the 1st Counselling.

No individual communication would be sent to the candidates in the waiting list and they should report on the date and time specified for the 2nd Counselling in the Bulletin of Information.

For each discipline the candidates in the waiting list would be those who were not offered admission in that Discipline.”

17. The counsel for the respondents University also drew attention to the waiting list prepared and published on 21st July, 2015 for admission to M.Ch. in Paediatric Surgery and in which the name of the petitioner does not find mention. The said waiting list is of candidates having rank 14 & 17 respectively i.e. below rank 8 of the petitioner in the merit list prepared earlier.

18. Clause 2.7.3 supra is not found to be providing for preparation of wait list of only those candidates who in the first counselling have submitted documents showing declaration of results of qualifying examination by 30th June, 2015. All that the same stipulates is that the waiting list is to be according to merit. According to the merit list prepared for 10th July, 2015, the petitioner is higher in rank than the two now put on the waiting list. No basis is found for preparation of wait list only of those who were able to show the result of their qualifying examination to have been declared before 30th June, 2015 during the first counselling held on 10th July, 2015. In the merit list prepared for counselling to be held on 10th July, 2015 the position

of petitioner and those whose names find mention in the wait list was the same i.e. the result of both had not been declared.

19. It is thus indeed found that the procedure adopted by the respondents University was/is at variance with that provided in the Bulletin of Information, in the following respects :

- a) The result of entrance test was announced on 3rd July, 2015 instead of 30th June, 2015.
- b) The candidates were permitted to submit the result of qualifying examination till the 1st counselling on 10th July, 2015 when as per Clause 2.4.3 it was to be accepted till 30th June, 2015 only.
- c) The waiting list prepared is not according to merit as provided in Clause 2.7.3 but a criteria of having shown by 10th July, 2015, to have passed the qualifying examination by 30th June, 2015 is introduced therein.

20. As far as the argument of the respondents University of the petitioner having known of the terms in the Bulletin of Information from the day when it was published in April, 2015 and being not entitled to challenge the procedure prescribed of admission after participation thereunder and remaining unsuccessful, is concerned, the said same in my view would not

be attracted here. The petitioner, in April, 2015 could not possibly have known that the University from which he has done the qualifying course would not be declaring the result by 30th June, 2015. The declaration of the result is not in the hands of the examinees. The petitioner thus had no occasion to challenge the same.

21. Similarly, non disclosure by the petitioner of the letter dated 6th July, 2015, in the facts and circumstances of the present case, is not found to be such so as to disentitle the petitioner to the relief. Though Clause 2.4.3 of the Bulletin of Information required submission of attested copies of the certificates of passing the qualifying examination latest by 30th June, 2015 but the merit list prepared for the counselling on 10th July, 2015 is found to contain endorsement as quoted above not only against the name of the petitioner and the two candidates put on the waiting list but also against the name of the rank holders 4,6,7,9,10,11, 16 and 20. The respondents Delhi University admittedly, till the first counselling on 10th July, 2015, was permitting the students to produce their result of the qualifying examination. The respondents University in their counter affidavit have admitted that some of the candidates admitted produced their result / notification during

the counselling on 10th July, 2015 itself. In view thereof, the letter dated 6th July, 2015 is of no avail.

22. No merit is also found in the contention, of the petitioner having not challenged the wait list and in which his name was not shown. The wait list is dated 21st July, 2015 and this petition came up first before the Court on 23rd July, 2015. Merely because while making challenge, one of the documents which could also have been challenged has not been named would not make any difference as long as in the context of the challenge made, the challenge thereto also is implicit.

23. I am also unable to appreciate the distinction made between ‘passing’ an exam and ‘declaration of result of an exam’. The respondent University, in the present case, well before the date (10th July, 2015) till which it was admittedly allowing the candidate to furnish proof of having passed the qualifying examination, was informed from the mark sheet of the qualifying examination taken by the petitioner sent in confidence by the University from which the petitioner had taken the qualifying examination that the petitioner had passed the same. However the said result had not been ‘declared’ or ‘published’ till then. The counsel for the petitioner during

the hearing handed over the proforma prescribed by the respondents University itself for making an application for “Issue Of Confidential Result”. The same is indicative of the respondents University itself recognizing the practice prevalent of accepting such result of another University for avoiding the hardship to the student because of delays of the University in publication and declaration of the result.

24. I am unable to find any rational nexus of the objective of stipulating a date for having passed the qualifying examination with the distinction carved out from amongst all those who have by the stipulated date passed the examination, between those whose result has been ‘declared’ / ‘published’ and those who though have passed the examination but whose result has not been published or declared by the University. The objective of stipulating a date is to provide a certainty and finality to the admission process and not allow it to remain open ended endlessly, thereby delaying the commencement of academic session. However if before that date the candidate is shown to have passed the qualifying examination, in my view it is immaterial whether the said result is declared/published or not. As aforesaid, the respondents University itself vis a vis admission to some other courses is following the procedure of granting provisional admission subject

to furnishing by subsequent date proof of having passed the qualifying exam. In spite of direction, no explanation has been given for not following the same procedure qua subject course, specially when a second round of counselling is being held. The insistence on declaration/publication of result of qualifying exam by a stipulated date has nothing to do with eligibility for admission to a higher specialty course. A candidate whose result has been declared/published cannot be said to be more meritorious than the candidate who though has by the stipulated date also passed the qualifying examination but whose result has not been declared/published when both have cleared the qualifying examination in same academic year.

25. This Court as far back as in *Deepika Chaudhary Vs. University of Delhi* 64 (1996) DLT 503 observed that a candidate successful in admission test ought not to be ordinarily rejected for the failure to furnish the result / mark sheet of the qualifying examination. It was held that a student exercises no control over the declaration of the result and not communicating the result within the stipulated time cannot be attributed to the student. It was reasoned that the University has to consider the welfare of the student and the impact of cancellation of admission and ought to exercise discretion on a case to case basis. It was further held that the provision has to be

benevolently interpreted and reasonably administered. The Supreme Court in *Shalini Vs. Kurukshetra University* 2002 (2) SCC 270 also observed that a student cannot be faulted for the delay on the part of the University in declaring the result, dispatching the same or even in re-evaluation of the answer book when has taken all steps promptly without any delay, remissness or laches in taking any of the steps. The same view was echoed by the undersigned in *Utkarsh Sharma Vs. Union of India* MANU/DE/3167/2010 and by another Single Judge in *Parvesh Kumar Vs. University of Delhi* MANU/DE/1467/2013. Reference may also be made to *Deep Gupta Vs. Guru Gobind Singh Indrapastha University* MANU/DE/1187/2008 observing that the object of the rule allowing candidates whose results in the qualifying examination are not declared by the time their turn for counselling arrives, to furnish their result of the qualifying examination is to save them from being deprived of admission to the concerned course for reasons beyond their control as it is the concerned board or the examining body which has to declare the results of the qualifying examinations. Similarly in *Rishabh Malhotra Vs. University of Delhi* MANU/DE/4887/2013, LPA 610/2012 preferred whereagainst was

dismissed on 6th September, 2012, also it was observed that the students cannot be penalized for the delays in declaration of results.

26. It will thus be seen that it has been the consistent opinion of this Court that technicalities beyond the control of the student ought not to be permitted to come in the way of meritorious students. The Courts have always held that the discretion in such circumstances needs to be exercised in favour of the student.

27. Moreover, the respondent University in its own Bulletin of Information, in the clauses aforesaid has stipulated the requirement only of “passing” the qualifying examination and not of result thereof being declared/published. As long as the respondent University, by the date stipulated therefor and which though was 30th June, 2015 but was extended by respondents University to 10th July, 2015, could be satisfied by documents produced that the candidate has passed the qualifying examination in that academic year, the insistence on the candidate also establishing that the said result had been declared/published is uncalled for and has no relation to the purpose sought to be achieved i.e. that the candidate is qualified for admission to the next stage of learning.

28. That leaves the argument, of consideration of the candidature of the petitioner being not permissible in accordance with the dicta of the Supreme Court in *Mridul Dhar* and *Priya Gupta* supra.

29. As per the said dicta, the respondents University of Delhi were required to declare the result of the Entrance Examination by 30th June; they also provided so in their Bulletin of Information. The respondents University of Delhi however itself did not abide thereby and admittedly declared the result of the Entrance Examination of 3rd July. Again, as per the said schedule, for Super Specialty courses there is to be no second round of counselling or allotment of seats from waiting list. Notwithstanding the same, the respondents University of Delhi are going ahead with the same. Once the respondents University of Delhi are themselves found to be tinkering with the said schedule, they cannot on the other hand apply the same strictly to the students.

30. For all the aforesaid reasons, the procedure followed by the respondents University of Delhi is not found to be in accordance with their own Bulletin of Information and is found to be arbitrary and unreasonable.

The petitioner is thus entitled to be considered for admission at least in the second round of counselling.

31. I am conscious that a direction to the aforesaid effect if issued would be to the prejudice of those whose names are included in the wait list declared and who have not been heard. However, once the defect is found in the procedure followed by the University, the same does not come in the way of grant of relief to the petitioner.

32. The petition, for the aforesaid reasons, is allowed by directing the respondents University of Delhi to draw up a revised waiting list of candidates eligible to participate in the second round of counselling for admission to the M.Ch. Paediatric Surgery course from the merit list prepared for the first counselling on 10th July, 2015 of those who by that date had produced the result, whether declared or not, of having passed the qualifying examination and who could not be offered a seat in the first round of counselling.

33. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 11th, 2015
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