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

+ W.P.(C) 681/2015

SUMIT KUMAR

..... Petitioner

Through: Mr. Kaushal Yadav, Advocate.

versus

GURU GOBIND SINGH

INDRAPRASTHA UNIVERSITY

..... Respondent

Through: Mr Harsh Kaushik and Mr.Abhay
Chattopadhyay, Advocates

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Date of Decision: 06th May, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking a direction to the respondent university to refund the entire fee deposited on 13th August, 2015 by the petitioner while seeking admission in Masters of Technology programme.

2. Learned counsel for the petitioner admits that though the last date for withdrawal was 19th August, 2014, yet the petitioner had applied for withdrawal on 20th August, 2014 by way of an e-mail. He, however, points out that as the second counselling was scheduled for 22nd August, 2014, the respondent university had the opportunity to enrol another student. Consequently, the counsel for the petitioner contends that in accordance

with the UGC Guidelines, the petitioner is entitled for refund after deduction of processing fee.

3. On the other hand, learned counsel for respondent-University states that the petitioner did not adhere to the directions prescribed by the respondent university for withdrawal. He states that Clause 7(d) of the respondent-University's first counselling notice stipulates that any request for withdrawal would not be entertained if sent by post or e-mail or fax. He points out that since in the present case the petitioner had sought for withdrawal by email date 20th August, 2014, the same was not in accordance with the procedure prescribed by the respondent.

4. Learned counsel for respondent-University also states that the application dated 21st August, 2014 which was delivered at the despatch department was beyond the last date for withdrawal and was neither furnished in the prescribed format nor addressed to the correct officer in accordance with clause 7(c) of the respondent's first counselling notice. He lastly states that petitioner's incomplete application for withdrawal was relayed to respondent's concerned branch only on 26th August, 2014 by which time, the respondent's second counselling session had been completed.

5. Having heard the learned counsel for parties, this Court is of the view that it is first essential to determine whether the respondent-University had the opportunity to enrol another student after the petitioner had applied for withdrawal.

6. Clause 7 of the first counselling notice issued by the respondent states that the prescribed withdrawal form was to be duly filled up and both the original admission slips issued by the respondent were to be returned in case

a student wished to withdraw from the programme as well as the withdrawal form was necessarily required to be submitted to the Joint Registrar of Admissions of the respondent and no communication in respect of withdrawal was to be accepted vide e-mail, fax etc.

7. Since in the present case, the petitioner had initially sought withdrawal by a prohibited mode i.e. e-mail dated 20th August, 2014 and the subsequent application dated 21st August, 2014 was furnished to the wrong branch and was not accompanied by relevant documents, this Court is of the view that respondent-University could not have enrolled another student in the second counselling.

8. Consequently, this Court is of the opinion that as a result of the petitioner's action, the seat remained vacant.

9. The consequence of the seat remaining vacant vis-a-vis the refund of fee has been dealt by this Court in ***Surbhi Singh vs. The Guru Gobind Singh Indraprastha University, W.P.(C) 1820/2012*** vide judgment and order dated **28th January, 2014**. The relevant portion of the said judgment and order is reproduced hereinbelow:-

*“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."

10. Keeping in view the aforesaid facts as well as the mandate of law, present writ petition is dismissed, but with no order as to costs.

MANMOHAN, J

MAY 06, 2016
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