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

+ LPA 268/2016 & C.M.No.15704/2016 (*stay*)

SHUBHAM AGGARWAL

..... Appellant

Through: Mr.Yashpal Singh, Adv. with
Ms.Atryee Gautam, Mr.Kaushlendra Singh,
Mr.Amit Juyal, Advs.

Versus

GURU GOBIND SINGH

INDRAPRASTHA UNIVERSITY & ANR

..... Respondents

Through: Ms.Anita Sahani, Adv. for GGSIP.
Dr.Vikas Chaddha, HOD-BBA, JIMS.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

17.05.2016

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1. This appeal is preferred against the order of the learned Single Judge dated 05.04.2016 in W.P.(C) No.2126/2016. The unsuccessful petitioner is the appellant before us.

2. The appellant/writ petitioner having been qualified in the CET conducted by the respondent No.1/University, was offered provisional admission in the BBA Programme 2015-16 subject to submission of the result of the qualifying examination by 15.10.2015 which was subsequently extended upto 02.11.2015. It is not in dispute that the appellant/writ petitioner failed to submit the result of his qualifying examination, i.e., Senior Secondary School from National Institute of Open Schooling (NIOS) on or before 02.11.2015. The appellant/writ petitioner was, therefore, held ineligible for admission in BBA Programme 2015-16. Aggrieved by the same, he filed W.P.(C) No.2126/2016 seeking a direction to the respondents

to regularize his admission in BBA Programme 2015-16. The said writ petition was dismissed by the learned Single Judge by the order under appeal dated 05.04.2016. Hence, the present appeal.

3. We have heard the learned counsel for both the parties. We have also perused the counter affidavit filed on behalf of the respondent No.1/University in terms of our direction dated 03.05.2016.

4. As is evident from the pleadings and the material available on record, the result of the appellant's Senior Secondary School Examination was declared by NIOS in the month of August, 2015 itself. However, the appellant was not qualified on the basis of the marks secured by him and, therefore, he appeared for on-demand examination held by NIOS in September, 2015 for improvement of the marks secured by him. The result of the said on-demand examination was declared by NIOS in November, 2015 and the Marks Statement was issued to the appellant on 14.11.2015 and thereafter it was submitted to the respondent No.1/University. Thus, it is clear that the result of the qualifying examination of the appellant was submitted only after the cut-off date of 02.11.2015 and consequently the respondents had denied admission to the appellant. In the light of the undisputed facts, as rightly held by the learned Single Judge the impugned action of the respondents cannot be held to be illegal on any ground whatsoever.

5. However, it is vehemently contended by the learned counsel for the appellant that having allowed the appellant to appear for the 1st Semester Examination and also to attend the classes in the 2nd Semester, it is not open to the respondents now to cancel the admission merely on the ground of late

submission of the result of the qualifying examination. In support of his submission that by cancelling the admission of the appellant at this stage the seat would remain vacant and the same is not in public interest, the learned counsel has placed reliance upon a decision of this Court dated 04.05.2011 in **LPA No.400/2011** titled ***University of Delhi vs. Varun Kapoor***. It is also submitted by the learned counsel that the result of the on-demand examination held in September, 2015 would relate back to the date when the main result was declared in August, 2015 and, therefore, the appellant shall be deemed to have satisfied the stipulated requirement of obtaining the qualification before the cut-off date.

6. We do not find substance in any of the above contentions. By the date the appellant was given provisional admission in BBA Programme, the result of his qualifying examination was not declared and, therefore, he was given an opportunity to produce the result of the qualifying examination before a specific date and an undertaking was given by him to that effect.

7. Admittedly, the result of the qualifying examination was declared before the cut-off date but the appellant was not qualified. The appellant had deliberately suppressed the said fact and falsely represented that the delay in submission of result was not attributable to him and that for the fault of NIOS he should not be made to suffer. Since it is apparent that the appellant did not approach this court with true facts and is guilty of suppressing material facts, as rightly submitted by the learned counsel for the respondent No.1 he is not entitled to any relief in exercise of equitable jurisdiction under Article 226 of the Constitution of India. The learned Single Judge was therefore justified in declining to entertain the writ

petition. We are also of the view that the appellant/writ petitioner cannot seek parity with the respondent in *University of Delhi vs. Varun Kapoor* (supra), which was decided in the peculiar facts and circumstances of the said case and cannot be treated as a precedent.

8. The appeal is, accordingly, dismissed.

CHIEF JUSTICE

JAYANT NATH, J

MAY 17, 2016
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