

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1806 of 2017

Priyesh Pathak, S/o Shri P.K. Pathak, aged about 17 years, R/o B-64, VIP Estate, Vidhan Sabha Road, Khamardih, Tahsil and District Raipur (C.G.) Through the Natural Guardian P.K. Pathak

---- Petitioner

Versus

1. Chanakya National Law University, through the Registrar, Nyaya Nagar, Mithapur, Patna – 800001, Bihar
2. Hidayatullah National Law University, Through the Registrar, Post Uparwara, Naya Raipur, District Raipur (C.G.)
2. Shivam Singh, Student, Through the Registrar, Hidayatullah National Law University, Through the Registrar, Post Uparwara, Naya Raipur, District Raipur (C.G.)
3. Shreem Thite, Student, Through the Registrar, Hidayatullah National Law University, Through the Registrar, Post Uparwara, Naya Raipur, District Raipur (C.G.)
4. Chandravati, Student, Through the Registrar, Hidayatullah National Law University, Through the Registrar, Post Uparwara, Naya Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Prateek Sharma, Advocate.
 For Respondents No.1 and 2: Mr. Sumesh Bajaj, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/07/2017

1. The petitioner, who comes under Specially Abled Person (SAP) category, appeared in the Common Law Admission Test (CLAT) conducted by Chanakya National Law University, Patna for which advertisement was issued on 25-12-2016 and examination was held on 14-5-2017. In that examination, the petitioner was ranked 27,030 in All India Rank and first indicative list was published on 5-6-2017 in which the petitioner was ranked 152 in HNLU and he deposited ₹

50,000/- as counselling fees and locked his seat for HNLU, but later-on, on 14-6-2017, the respondent University informed the petitioner that his name has incorrectly been indicated in the first indicative list on account of software generated error and refunded the amount of ₹ 50,000/- to him. The second indicative list was published on 12-6-2017 and the third indicative list was published on 19-6-2017 in which the petitioner's name did not appear as successful candidate, however, on 24-6-2017, the fourth and final comprehensive list was issued and in this list also, the name of the petitioner was not reflected. It is the case of the respondents that though the petitioner's name did not appear in the fourth and final comprehensive list, but the petitioner was informed telephonically on 28-6-2017 as well as by e-mail on 29-6-2017 that he is qualified for admission in Damodaram Sanjeevayya National Law University, Visakhapatnam by respondent No.1, but the petitioner did not take admission in that University and has filed this writ petition seeking quashment of Annexure P-1 by which he was informed that his name has wrongly been included for consideration in the said list and praying that he be given admission in HNLU.

2. Mr. Prateek Sharma, learned counsel for the petitioner, would submit that the petitioner being a specially abled category person had already deposited ₹ 50,000/- on 8-6-2017 and his name did not appear at all in remaining second and third indicative lists and, therefore, there was no opportunity for the petitioner to get admission and he had already locked his seat at HNLU. The petitioner was informed on 29-6-2017 by e-mail that he is selected for admission in Damodaram Sanjeevayya National Law University, Visakhapatnam. The petitioner being suffering from disability has wrongly been denied

admission in HNLU and therefore appropriate writ be issued in his favour.

3. On the other hand, Mr. Sumesh Bajaj, learned counsel appearing for respondents No.1 and 2, would submit that the petitioner's name was shown only in the first indicative list which was issued on 5-6-2017, but that was a computer generated software error and it was an inadvertent mistake. There is a disclaimer clause that no right accrues to the petitioner for claiming any right and therefore, his amount was returned and rightly his name did not appear in the second and third indicative lists as he was not qualified. The petitioner was informed by e-mail dated 29-6-2017 for taking admission in Damodaram Sanjeevayya National Law University, Visakhapatnam, but he did not respond and filed writ petition. Payment of counselling fees of ₹ 50,000/- is not completion of admission, as the admissions are to be taken and completed only after issuance of the fourth and final comprehensive allotment list. Refund of the petitioner's amount was also done immediately within the knowledge of the petitioner. Responding to the question of reservation, he would submit that process of advertisement has already been issued on 25-12-2016 and new Act of 2016 i.e. the Rights of Persons with Disabilities Act, 2016, came into force only on 19-4-2017 and as per the settled law, process once issued will have to be completed as per the old rules under which the recruitment process was issued, therefore, the new Act of 2016 would not be applicable and reservation has been done strictly in accordance with law and no interference is warranted.
4. I have heard learned counsel for the parties.
5. So far as the question of reservation is concerned, admittedly,

process of advertisement for examination has been initiated on 25-12-2016 and the new Act of 2016 came into force with effect from 19-4-2017, therefore, the reservation as indicated in the Act of 2016 cannot be directed to be followed.

6. It is well settled law that process once issued in accordance with the existing Rules that has to be followed for completing recruitment and the new rules, if any, came into force after the issuance of process cannot be made applicable for recruitment which has already been initiated. (See **Richa Mishra v. State of Chhattisgarh and others**¹, paragraphs 18 to 21.)
7. In the matter of **P. Mahendran and others v. State of Karnataka and others**², Their Lordships of the Supreme Court while dealing with the question of retrospectivity of statute or statutory rule held as under: -

“7. In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. ...

11. ... If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. ...”

8. This would bring me to the next submission that the petitioner was admitted in HNLU, Raipur and thereafter he has wrongly been denied admission. The petitioner only deposited counselling fees on 8-6-2017 and on 14-6-2017 as the error of software has been noticed and

1 (2016) 4 SCC 179

2 (1990) 1 SCC 411

it has been informed to respondent No.1, the petitioner's amount has been returned on 15-6-2017. The petitioner kept mum without challenging the action of the respondents by any legal action and taking a chance, ultimately, filed writ petition on 30-6-2017. The list in which the petitioner's name finds place was the first indicative list and even on account of disclaimer, the petitioner had no vested right merely on deposit of counselling fees. He was not admitted on 8-6-2017 by deposit of counselling fees. Even otherwise, it is admitted position that he was offered admission in Damodaram Sanjeevayya National Law University, Visakhapatnam, but he did not respond and taking his claim to be admitted, merely on the basis of first indicative list issued on 5-6-2017 for which he deposited counselling fees of ₹ 50,000/- on 8-6-2017 which has already been refunded to him on 15-6-2017, as such, merely on the basis of inclusion of his name in the first indicative list, he did not have any vested right to take admission in HNLU especially due to the mistake occurred in the error of computer software which was rectified later-on. Thereafter, the petitioner did not challenge the action of the respondents and took a chance for second, third and fourth indicatives lists and waited till 30-6-2017 and thereafter, filed the instant writ petition.

9. On account of foregoing reasons, I do not find any merit in this petition. The petition is accordingly, dismissed. However, if any seat falls vacant and made open to the candidate, and if the petitioner is found qualified, this order will not come in the way of the petitioner. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge