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

% *Date of Judgment : 18.7.2017*

+ W.P.(C) 2269/2017 & C.M .No.9804/2017

RAM NARAYAN TIWARI Petitioner

Through Mr. Atul Aggarwal, Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND
ANR Respondents

Through Ms. Ekta Sikri, Mr. Ajay Pal and Ms.
Jasbir Bidhuri, Advs for R-1.

Ms. Deboshri Mukherjee for Mr.
Saurabh Chadda, Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Petitioner is seeking a quashing of the order dated 31.01.2017 as also earlier order dated 01.12.2016 wherein the admission of the petitioner has been cancelled by the respondent.

2 The petitioner is presently pursuing his B.Tech course from respondent no.1/University. He is studying in the Engineering College i.e. respondent no.3. Record shows that the petitioner had applied for his entrance examination at the university of respondent no.1 in Common Entrance Test (CET) held by them for the B.Tech course on 22.02.2015. He had appeared for his class 12th CBSE Examination in March, 2015. His

result was declared on 25.5.2015. Meanwhile pursuant to his CET result (he scored 37508 Rank (Outside Delhi)) he applied for his online counselling for Environmental Engineering.

3 The petitioner cleared his compartment examination in 2015; result of which was declared on 06.08.2015. He submitted the original marks sheet to the University i.e. the respondent no.1 on 29.8.2015. Petitioner had appeared for his first semester examination in 2015; he appeared for his second semester examination in May 2016. Petitioner also appeared for his third semester examination in the month of December, 2016.

4 Meanwhile the decision dated 01.12.2016 taken by respondent no.1 for cancellation of admission of the petitioner was upheld in appeal by the Appellate Authority of respondent no.1 on 31.01.2017.

5 Petitioner is aggrieved by the aforementioned orders as in terms of these directions petitioner has been informed that since he did not fulfil the eligibility criteria of 55% in PCM for admission in the B.Tech course his admission for Academic Year 2015-16 stood cancelled. Contention of the petitioner is that although admittedly he did not fulfil the eligibility criteria and he did not have 55% aggregate in the three subjects i.e. physics, chemistry and mathematics yet he had applied for his compartment examination which result was declared on 06.8.2015. This result which he had secured in the compartment examination, by virtue of which his aggregate improved substantially, was communicated to respondent no.3 in August, 2015 itself. The cut off date for the submission of the result of the petitioner was admittedly October, 2015. It is also not the case of either party that the petitioner had not submitted his improved result by October, 2015.

6 The first impugned order was passed in December, 2016 when the petitioner had already entered the third semester and in fact had taken his examination for the third semester; and the order leading to the cancellation of his admission has gravely prejudiced the case of the petitioner. He has been left in the lurch. He does not know where to go; after completing more than 50% of the course (which is a three years course) he cannot now be thrown out from the institute. He has placed reliance upon a catena of judgments which as per him support his case.

7 Learned counsel for respondent nos.1 and 2 have filed their counter affidavit. Stand of respondent no.1 is that since the petitioner did not fulfil the eligibility criteria and not having got 55% aggregate even in his compartment examination the University had every right to cancel his admission. Moreover this was only a provisional admission. The impugned orders suffer from no infirmity. If the case of the petitioner is sympathetically considered it would be a bad precedent for others in future. Learned counsel for respondents has placed reliance upon various judgments.

8 Respondent no.3 has also filed a separate counter affidavit. Submission of respondent no.3 is that the petitioner was only provisionally admitted on 05.8.2015. He had been given this provisional admission subject to a final admission on his scoring a minimum aggregate of 55% in physics, chemistry and mathematics which he had not qualified even as per the result of his compartment examination. This result was submitted by the petitioner to respondent no.3 in August, 2016. The college/respondent no.3 submitted this result to the University vide its letter dated 01.12.2016 stating that the petitioner has failed to fulfil the eligibility criteria; as such the

admission of the petitioner be cancelled as he did not fulfil the eligibility criteria. Further submission is that this order of cancellation of admission of the petitioner suffers from no infirmity.

9 Arguments have been heard. Record has been perused.

10 All students on qualifying in 10+2 examination were eligible to appear in the CET. The petitioner had passed the CET. The admission Brochure specifically stated that a candidate will be given a provisional admission; they had to fulfil the eligibility criteria as contained in the said Brochure by 15.10.2015. The eligibility criteria of respondent No.1 is contained at page 34 of the paper book. It reads as under:

4	B.Tech. CET	131	<i>Eligibility Conditions:</i> <i>Pass in 12th Class of 10+2 pattern of CBGSE or equivalent with a minimum aggregate of 55% marks in Physics, Chemistry and Mathematics provided the candidate has passed in each subject separately. Candidate must additionally have passed English as subject of study (core/elective/functional) in the qualifying examination.</i> <i>Admission Criteria:</i> <i>All applicants must appear in the CET conducted. The admissions would be based on the merit/rank in the CET.</i>
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11 This criteria preordains that in 12 class or its equivalent the candidate must have obtained a minimum of 55% in physics, chemistry and

mathematics and the candidate must have passed in each subject separately. The candidate must have passed English as a subject.

12 Record shows that the petitioner had in the initial examination secured 55 marks in physics; 54 in chemistry and only 10 marks in mathematics; he had passed in the English examination. Apart from having failed in mathematics his aggregate in the three subjects did not fulfil the criteria of 55%. He had appeared in the compartment examination, result of which was declared in August, 2015. The said mark sheet is at page 78 of the paper book. As per this mark sheet the petitioner had secured 33 marks in mathematics. This again did not fulfil the criteria of 55%. The aggregate of mathematics, physics and chemistry (mathematic-33; physics-55, chemistry-54) was 47%. The eligibility criteria for admission to the B.Tech Course is 55%. The affidavit of the petitioner (annexure 5) has been highlighted by the learned counsel appearing for respondent nos.1 and 2. It is pointed out that in this affidavit the petitioner clearly stated that if he did not fulfil the criteria of 55% aggregate and did not submit the appropriate proof to the said effect by 15.10.2015 his admission to the said course would automatically be cancelled. The order of cancellation of the admission of the petitioner thus suffers from no infirmity.

13 This Court also notes that although the petitioner had not qualified in the eligibility criteria it is not the case of the respondent that the petitioner had hidden his result from the university. He had communicated the result of his compartment examination to respondent no.3 in August, 2015 (which had to be submitted before 15.10.2015). This fact was brought to the notice of respondent no.3 well within time. Respondent no.3, however, slept over the matter. Respondent no.3 allowed the petitioner to appear in his second

semester examination for the academic year 2015-16. Respondent no.3 even permitted the petitioner to appear in his third semester i.e. for the examination which was held in December, 2016.

14 The petitioner's mark sheet (of his compartment examination) had been brought to the notice of respondent no.3 in August, 2015. However, respondent no.3 slumbered over the matter and did not take any action; it did not admittedly communicate this mark sheet/result to respondent no.1 and 2 till December, 2016 which was after a lapse of one year and three months for which also there is no explanation. The contention of respondent nos.1 and 2 that the petitioner was aware of the fact that he not having fulfilled the eligibility criteria and no equity weighs in his favour and even presuming that he was permitted to take the third semester examination this would not by itself make him eligible he not having fulfilled the eligibility criteria for the admission in the B.Tech which he was undergoing is a misunderstood argument in the facts of the instant case.

15 In the judgment of the Apex Court reported as 1990 AIR 1975 Sanatan Gauda Vs. Berhampur University and Ors. where a candidate had been admitted to a three years law course and the candidate who had studied for two years and had been admitted to the final year of the course when at that stage at the time of declaration of his result an objection was raised by the University about his ineligibility for the law course. The Apex Court had rejected the contention of the University.

16 The Apex Court had an occasion to consider submissions of the same nature now advanced before this Court in the judgment (supra) and the following observations made by the Apex court are relevant in the facts of the instant case:

“It is important to appreciate that the appellant cannot be accused of making any false statement or suppressing any relevant fact before anybody. He had produced his marks-sheet before the College authority with his application for admission, and cannot be accused of any fraud or misrepresentation. The interpretation of the rule on the basis of which the university asserts that the appellant was not eligible for admission is challenged by the appellant and is not accepted by the College and my learned Brother accepts the construction suggested by him as correct. In such a situation even assuming the construction of the rule as attempted by the University as correct, the principle cannot be condemned for recommending the candidature of the appellant for the examination in question. It was the bounden duty of the University to have scrutinized the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to public his results.”

17 In AIR 1980 Delhi Miss Sangeeta Srivastva Vs. Prof. U.N.Singh and Ors. a Division Bench of this Court had while considering the cancellation of admission of a student who had been admitted to M.A. class on the ground that she was not eligible; where the University had informed the concerned college about the cancellation of her admission but the college through inadvertence did not inform the student and she was treated as a regular student in the course; she was informed of cancellation of her admission only a few days before the examination; the Division Bench applying the principle of equitable estoppel held that the University could not refuse the candidate from appearing in the examination when the candidate had placed

all facts before the University and has not committed any fraud or misrepresentation.

18 In Civil Appeal No.10817 of 1983 Rajesh Kumar Mehta Vs. Karnataka University and Another reported as 1986 Supp. SCC 741, the Apex Court while noting that the Court should be slow in interfering in the policies laid down by the Universities and the colleges and also noting that in the facts of that case appellants were not eligible for admission to the engineering degree course and they had no legitimate claim to the same but nevertheless had gone on to state that if the appellants were given admission for the sake of capitation fee, they should not be made to suffer for the fault of college. The relevant extract of the aforementioned judgment reads herein as under:

“The fault lies with the engineering colleges which admitted the appellants because the Principals of these engineering colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these engineering colleges. We would therefore notwithstanding the view taken by us in this Judgment, allow the appellants to continue their studies in the respective engineering colleges in which they were granted admission.”

19 In the judgment relied upon by the learned counsel for the respondent reported in LPA 268/2016 Shubham Aggarwal Vs. Gurugobind Singh Indraprastha University and Anr. the petitioner had not been able to submit his result to the respondent before the cut off date of 02.11.2015. He had not

given his result by 02.11.2015. The Court was also of the view that the petitioner had not approached the court with clean hands. That judgment is distinct on its facts.

20 The petitioner cannot in the middle of the course be asked to get his admission cancelled. This is admittedly a case where the petitioner has not played any fraud; he had not made any misrepresentation to the Department. He had come with clean hands. He had submitted his compartment result in August, 2015 to respondent no.3. Respondent no.3 sat over it. Respondent no.3 in the meanwhile allowed the petitioner to take examination of his second semester as also his third semester. Petitioner was thereafter informed that his admission was cancelled. He was not allowed to appear in the fourth semester examination. The result of compartment examination had raised his aggregate percentage up to 47%; the criteria was 55%; he did not fulfil the criteria, however, it was upon (respondent no.3) to have informed the University (respondent nos.1 and 2) in time which it did do so; it slept over the matter for more than one year and three months. The petitioner was under the bona fide impression that he is going to complete his course and his legitimate expectation was that he would qualify with a degree of engineering; this was a valid expectation. He cannot now be left in the lurch in the middle of the course. The benefit of the principle of equitable estoppel as applied by the Supreme Court in the judgment of Rajesh Kumar Mehta (supra) comes to the aid of the petitioner. This Court is of the view that the petitioner must be allowed to complete his B.Tech course as he has completed more than 50% of it having been successful in 3 semesters with more than 60% marks. It is also pertinent to point out that the respondent nos.1 and 2 in their affidavit have not detailed the action

which they have taken or proposed to take against the respondent no.3 in not informing them about the case of the petitioner in time. This was an incumbent responsibility upon respondent nos.1 and 2 as well for which the petitioner cannot be made to suffer.

21 Petition is allowed in the above terms.

INDERMEET KAUR, J

JULY 18, 2017

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