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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3835/2017, C.M. No.16843/2017 & C.M. No.29352/2017

NEHA GOEL

..... Petitioner

Through Mr.Rama Shankar and Mr.Saurabh,
Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr.Nirvikar Verma, Government
Pleader for UOI/R-1.
Mr.Ravinder Aggarwal, Advocate for
UGC/R-2.
Mrs.Ekta Sikri, Mr.Ajay Pal and Mr.
Jasbir Bidhuri, Advocates for
R-3/GGSIPU.
Mr.A.K.Singh, Advocate for R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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31.08.2017

1. Petitioner had sought admission in the Bachelor of Computer Application (BCA) course of Guru Gobind Singh Indraprastha University (respondent no.3). She had appeared in the entrance examination for the aforementioned course (2016-17). This was after she had successfully qualified for her 12th standard. She had been admitted in the respondent no.4 college (SGTI School of Management). On 11.11.2016 respondent no.3 illegally issued a letter cancelling her admission; she learnt that it was for the reason that she did not meet the eligibility criteria as such her admission

stood cancelled. On 03.3.2017 respondent no.4 for the first time wrote a letter to respondent no.3 clarifying the position as to why petitioner's admission stood cancelled.

2. Meanwhile, petitioner had appeared for her first semester examination. The result was declared but the result qua the petitioner had been withheld; she was also not permitted to give her examination for the second semester. On 02.5.2017 pursuant to an order of this Court her Admit Card was issued and she was permitted to appear in second semester examination.

3. This Court notes that the course which the petitioner is pursuing is a 3 year course. Her result for the first and second semester had been withheld. The prayers in the present petition are that this result be declared and the petitioner be permitted to continue and complete her course (3 year course).

4. Counter affidavit has been filed both by respondent nos.3 and 4. Respondent no.3 has vehemently negated the submissions of the petitioner. It is pointed out that besides the fact that the petitioner has not come to the Court with clean hands it is clarified that the eligibility criteria as contained in the prospectus of respondent no.3 clearly stipulates the eligibility conditions. The said eligibility conditions read herein as under:

<i>S.No.</i>	<i>Name of CET</i>	<i>CET Code</i>	<i>Eligibility Conditions & Admission Criteria</i>
<i>1</i>	<i>Bachelor of Computer Application</i>	<i>114</i>	<i>Eligibility Condition: Pass in 12th Class of 10+2 of CBSE or equivalent with a minimum of 50% marks in aggregate with pass in English (Core or elective or functional) and</i>

			<i>Mathematics or Computer Science/Informatics Practice/Computer Application/Multimedia & Web Technology/Data Management Application/ Web Application.</i>
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5. It is pointed out that the petitioner should necessarily have passed the 12th class examination with a minimum of 50% in the aggregate with either mathematics or computer science/informatics practice/computer applications/multimedia and web technology/data management application/web application which requirement the petitioner did not meet. Moreover, the petitioner had taken admission directly under the Management Quota of respondent no.4. Having been admitted into the college directly respondent no.3 had no chance to scrutinize the documents of the petitioner; upon scrutiny respondent no.3 learnt that the petitioner did not qualify the eligibility criteria. This was in October, 2016. On 11.11.2016 the admission of the petitioner stood cancelled. It is further pointed out that for eligibility to the aforementioned course (BCA) Mathematics would be a compulsory subject and in lieu thereof Computer Science/Informatics Practice/Computer Application/Multimedia and Web Technology/Data Management Application/Web Application may be an alternate subject; an advanced learning and knowledge at a higher stage is involved qua this subject. Petitioner as per her documents had only qualified “Typography and Computer Application English” as a vocational subject. Attention has been drawn to the documents of the petitioner. It is pointed out that the petitioner was well aware

that for the eligibility criteria she had to complete curriculum course in Mathematics meaning thereby she must have completed Mathematics or Computer Science or Computer Application wherein the theory paper would be of 70 marks and the practical would be of 30 marks. The documents of the petitioner reflect that she had qualified a vocational course; this is clearly evident from her marksheet wherein she had obtained 68 marks in Typography and Computer Application English (practical) and 26 marks (in theory); reflecting the fact that this was a vocational course which the petitioner had pursued; thus she did not fulfil the eligibility criteria of the respondent University.

6. The counter affidavit of respondent no.4 has also been perused. Learned counsel for respondent no.4 admits that the petitioner had been admitted directly in the Management Quota; it is the stand of respondent no.4 that the eligibilities as laid down by respondent no.3 in their Prospectus have to be abided by respondent no.4. The lacking in the documents of the petitioner was brought to the knowledge of respondent no.4 only belatedly and forthwith in March, 2017 this had been informed by respondent no.4 to respondent no.3. Respondent no.4 is supporting the stand of respondent no.3. Respondent no.4 however has not answered as to why he admitted the student in the first place when the documents clearly evidenced that the petitioner was not eligible for admission as per the prospectus of respondent no.3.

7. Rejoinder has been filed by the petitioner. Petitioner reiterates her stand that she is not a candidate admitted under the Management

Quota; she comes under the General Quota.

8. This stand of the petitioner has been falsified by a document which has been placed on record by respondent no.3; this document shows that the petitioner had paid fee of Rs.72,000/- to respondent No.4 which is a fee for a student admitted in the management quota.

9. Learned counsel for respondent no.3 admits that an allotment letter had been issued to the petitioner for admission in the General Category but she has not opted for admission under that category but had directly approached the college (respondent no.4) and taken admission under the Management Quota. Petitioner is present in Court; her father is also present in person. Both of them admit that they had paid a fee of Rs.72,000/-. Rs.72,000/- is the fee in the Management Quota. At the first blush petitioner and her father had tried to convince the Court that the petitioner had been admitted in the General Quota but thereafter conceded that they had paid fee of Rs.72,000/- directly to the college and got admission in the Management Quota. A query has been put to the learned counsels for the parties as to what would be the difference if a candidate is admitted through the General Quota or the Management Quota. The query has been answered by explaining to the Court that in case of admission through the Management Quota the documents are scrutinized by the college itself and the University (respondent no.3) does not get a chance to scrutinize those documents at that stage; the documents of the petitioner had been scrutinized by respondent no.4 alone in the first instance. This is an admitted position.

10. Respondent no.4 had admitted the student into the college

under Management Quota knowing fully well that the petitioner did not qualify the eligibility conditions. Her documents clearly speak on this count. Learned counsel for respondent no.4 submits that respondent no.4 learnt about this lacunae later on. This stand of respondent no.4 is incorrect; it is not appreciated. It appears that to pocket the fee from the student, respondent no.4 played havoc with the career of the petitioner by giving her admission in the BCA course knowingly that she would not stand the test of eligibility.

11. Be that as it may, petitioner does not qualify the eligibility criteria for admission to the BCA course. This Court is thus of the view that the petitioner not having the requisite qualification (as per the eligibility conditions of respondent no.3) her admission is liable to be cancelled.

12. The Apex Court in this context in a judgment delivered on 19.7.2010 in Civil Appeal No.6807 of 2008 Maharshi Dayanand University Vs.Surjeet Kaur had held as under:

“15..... As a matter of fact, under the garb of the said Notification, the respondent managed to get her form registered with the appellant and when this discrepancy was discovered, the appellant chose to set it right which in our opinion was perfectly justified. The respondent cannot plead any estoppels either by conduct or against a Statute so as to gain any advantage of the fact that she was allowed to appear in the examination.

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17. There can be no estoppels/promissory estoppels against the Legislature in the exercise of the legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition. Promissory estoppels being an equitable doctrine, must yield when the equity so requires.”

13 The Supreme Court in (2008) 17 SCC 611 Mahatma Gandhi University And Another Vs. Gis Jose and Others had inter-alia observed:

“10. The misplaced sympathies should not have been shown in total breach of the rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in CBSE v. Sheena Peethambaran. In para 6 of the judgment, this Court observed as follows: (SCC p.724)

“6 This Court on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petition. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions.”

11. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write examination which was totally illegal.”

14 The Division Bench of this Court in LPA 345/2014 Shri Birender Singh Vs. Union of India and Ors.(2.5.2014) has in such a context inter-alia held:

“8. The only argument urged by the counsel for the appellant before us is that the learned Single Judge failed to consider that the principle of estoppel applies to the respondent no.3 University; that the respondent no.3 / university, notwithstanding the appellant being not eligible, having demanded and accepted tuition fee from the appellant semester after semester and having also issued admit cards enabling the appellant to appear in the various semester examinations, is now estopped from raising the plea of the eligibility of the appellant.

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12. Once it is found that the respondent no.3 University did indeed had on time cancelled the provisional admission of the appellant, the

mere fact that the appellant, with full knowledge of the cancellation of the provisional admission, continued to pay the fee and pursue the course and to apply for LPA 345/2014 Page 8 of 9 admission ticket for taking the examination misrepresenting that he continued to be admitted to the course and taking advantage of his admission being in an affiliate of a State university having a large number of students, will not entitle the appellant to invoke the principle of estoppel.

13. It cannot also be lost sight of that the admission of the appellant by misrepresentation was at the cost and to the prejudice of some other eligible student who though in the competitive examination / admission test may have secured a rank lesser than the appellant but was eligible. We are a country of shortages, where for each and every seat in an educational institution, hundreds compete and we cannot reward such malpractices.

15. We have enquired from the counsel for the appellant whether not the same would amount to condoning the serious defaults of the appellant including of misrepresenting, hoodwinking and cheating and whether not the same would amount to rewarding instead of punishing the appellant for his misdeeds.

16. Expectedly, no plausible answer is forthcoming.

17. We thus agree with the learned Single Judge that the situation, of which advantage is sought to be taken, is a creation of the appellant himself and the appellant cannot benefit therefrom.”

15. This Court notes that the petitioner has not come to the Court with clean hands. The eligibility conditions entailed a curriculum course in Mathematics (or the optional subject given in the brochure); what the petitioner had completed in her 12th Class CBSE was a vocational course; it was not a full time curriculum course; she was aware of this lacunae. That apart the petitioner has continued to harp before this Court that she was not admitted in Management Quota. This has also been so stated in the rejoinder. It was, however, otherwise. Such a candidate deserves little sympathy.

16. It has rightly been pointed out by respondent no.3 that such

concessions would be misplaced in the light of the aforenoted judgments.

17. Petition dismissed.

INDERMEET KAUR, J

AUGUST 31, 2017

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