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

+ **LPA 625/2017, CM No. 34521/2017 & CM No. 36795/2018**

GURU GOBIND SINGH INDRAPRASTH UNIVERSITY Appellant

Through: Ms. Ekta Sikri, Advocate with Mr.
Jasbir Bidhuri, Advocate.

versus

RAM NARAYAN TIWARI & ANR

..... Respondents

Through: Ms. Suman Chauhan, Advocate for
Respondent No.1.

Mr. Shadan Farasat, ASC, GNCTD
with Ms. Hafsa Khan and Mr. Ahmed
Said, Advocates for the College.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

07.12.2018

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Dr. S. Muralidhar, J.:

1. This is appeal by the Guru Gobind Singh Indraprastha (hereinafter referred to as 'University') against a judgment dated 18th July, 2017 by learned Single Judge allowing the Writ Petition (Civil) 2269/2017 filed by Respondent No. 1, Mr. Ram Narayan Tiwari, and directing that Respondent No. 1 "must be allowed to complete his B.Tech course as he has completed more than 50% of it having being successful in 3 semesters with more than 60% marks".

2. The background facts are that Respondent No. 2 (Braham Prakash Government Engineering College) is affiliated to Appellant-University. Respondent No. 1 was granted provisional admission in the B. Tech course in the said college for the academic year 2015-2016.

3. Clause 2.1.4 of the Admission Brochure titled 'Eligibility Conditions and Admission Criteria' reads as under:

"Eligibility Conditions:

Pass in 12th Class of 10+2 pattern of CBSE of equivalent with a minimum aggregate of 55% marks in Physics, Chemistry and Mathematics provided that the candidate has passed, in each subject separately. Candidate must additionally have passed English as a subject of study (core/ elective /functional) in the qualifying examination."

4. Respondent No.1 appeared for his 12th Class CBSE Examination in March 2015, the result of which was declared on 25th May, 2015. In the Common Entry Test (CET) in which he appeared, Respondent No.1 secured 37508 rank (outside Delhi), he applied for his online counselling for Environmental Engineering. In the initial result for the 12th standard, he scored 55 marks in Physics, 54 in Chemistry and just 10 marks in Maths. Therefore, he did not fulfil the eligibility criteria of 55% in Physics, Chemistry and Maths (PCM), which was essential for admission to the B. Tech course.

5. Respondent No.1 took a compartment examination, the result of which was declared on 6th August, 2015. In the compartment exam, his marks were Mathematics-33, Physics-55 and Chemistry-54. The aggregate was 47%.

Therefore, for the second time, even after the compartment exam, the Respondent No. 1 did not meet the threshold of 55% in PCM which was the eligibility criteria of the admission to the B. Tech course. He submitted the results of his compartment exam to his college before the cut off date of 15th October, 2015.

6. For some reason, which is not clear, the Respondent No.2 college did not immediately inform the Appellant University that Respondent No.1 had failed to meet the eligibility criteria even in his compartment examination. This was despite a letter addressed by the University on 20th October, 2015 to all Principals of the affiliated colleges, including the Respondent No.2 College, stressing upon Clause 3.8 of the Admission Brochure and emphasising that students who are provisionally admitted during the academic session 2015-16 will have to submit the final result of qualifying degree on or before 15th October, 2015 to the concerned Dean/Director, where the admission was granted. The letter further stated that Deans of all affiliated institutes will be required to submit a certificate to the Admission Branch as well as the Examination Branch of the University stating that the proof of fulfilling minimum eligibility in respect of all students admitted in various programmes in the academic session 2015-16 has been checked and they have been found eligible for pursuing the programme. This was followed by a circular dated 5th November, 2015 reiterating that the eligibility of all students be properly verified as against the minimum eligibility conditions for the respective programmes as listed in admission brochures 2015-16, or as notified by the University from time to time.

7. In the meanwhile, for a second time, Respondent No. 1 appeared for 12th standard examinations for the improvement of his marks in the months of February and March, 2016, results of which were declared on 21st May, 2016. It appears that in terms of the marksheet issued by the CBSE dated 21st May, 2016 he secured 58 in Mathematics, 74 in Physics and 85 in Chemistry with an aggregate of 78%. This obviously could not be relied upon to justify his admission to the 2015-16 B. Tech course the deadline for which was 15th October 2015.

8. For the first time, the Respondent No. 2 College addressed a letter dated 1st December, 2016 to the Appellant-University stating as under:

“D. Above named student who had been provisionally admitted has failed to fulfill the eligibility criteria as on the stipulated time period of 15th October 2015. The admission of the abovenamed student may be cancelled from the Academic session 2016-17.

9. This was followed by another intimation dated 6th December, 2016 from the Respondent No.2 College to the Appellant-University, which reads as under:

“Sir,

The student Mr. Ram Narayan Tiwari, Enrolment No. 411 of 207 056 15, B.Tec (Env.) Engineering who was provisionally admitted in this college for Academic Year 2015-16 has failed to fulfil the eligibility criteria as on the stipulated time period of 15th October, 2015.

The admission of the above Mr. Ram Narayan Tiwari, Enrolment No. 411 207 056 15, B.Tec (Env.) Engineering student may be cancelled from the Academic Session 2015-16

This issues with the prior approval of Principal/Head of

Department.”

10. In response thereto on 22nd December, 2016, the Appellant wrote to the Respondent No. 2 college informing it of the cancellation of the admission of Respondent No. 1 in the academic session 2015-16, “due to non-fulfilment of the eligibility for admission in the B-Tech programme.”

11. Respondent No. 1 then sent a written appeal to the Appellant-University on 28th December, 2016 requesting that his admission should not be cancelled and bringing to its notice that in the meanwhile he had been appearing in the exams in the B. Tech course and had been successful.

12. On 31st January, 2017, the University informed Respondent No. 1 that his case could not be considered as he did not fulfil the eligibility criteria of 55% in PCM for the admission in the B. Tech course in the academic year 2015-16.

13. It is in those circumstances, Respondent No. 1 filed Writ Petition (Civil) No. 2269/2017 in this Court seeking quashing of the aforementioned order dated 31st January, 2017 and the earlier order dated 1st December, 2016 whereby his admission had been cancelled by the Appellant-University.

14. A perusal of the impugned order of the learned Single Judge reveals that first it was concluded, after noticing that on two occasions that is in the main 12th class exam as well as in the compartment exam, Respondent No. 1 had failed to meet the eligibility criteria that “the order of cancellation of the

admission of the Petitioner thus suffers from no infirmity.”

15. Despite coming to the above conclusion, the learned Single Judge observed that since the college had “slumbered over the matter and did not take any action” and admittedly did not communicate the results of his compartment exam to the University till December 2016, the contention of the Appellant that there could be no equity in his favour was “a misunderstood argument in the facts of the instant case.” Relying on the judgment of the Supreme Court in *Sanatan Gauda v. Berhampur University (1990) 3 SCC 23*, *Miss Sangeeta Srivastava v. Prof. U.N. Singh AIR 1980 Del 27* and *Rajendra Prasad Mathur v. Karnataka University AIR 1986 SC 1448*, the learned Single Judge held that the Appellant-University was estopped from cancelling the admission of Respondent No. 1 and that he should be allowed to complete the B. Tech course since he had, by the time of disposal of the writ petition, completed more than 50% of the course having being successfully appeared for 3 semesters having 60% marks.

16. Another surprising feature is that there was no interim order passed by the Single Judge at any time during the pendency of the Writ Petition (Civil) 2269/2017. It appears that Respondent No. 1 did not even attend a single class in the Fourth semester of the B. Tech course.

17. While no interim order of stay in favour of the Appellant University was passed in this Court, Respondent No.1 was permitted to sit for the 6th and the 7th Semester exams. But it was clear that these exams taken pursuant to

interim orders were subject to the result of the appeal.

18. This Court has heard the submission of Ms. Ekta Sikri, learned counsel for the Appellant, Ms. Suman Chauhan, learned counsel for Respondent No.1. and Mr. Shadan Farasat, learned counsel for the Respondent No.2 college.

19. It is plain from the facts themselves that the eligibility criteria for admission to the B. Tech course of a college affiliated to the Appellant-University is 55% average in PCM. As far as Respondent No. 1 is concerned in the 12th class CBSC exams, his marks in the PCM subjects were 55 in Physics, 54 in Chemistry and 10 in Maths. He, therefore, did not fulfil the criteria of 55%. Even in the compartment examination, the result for which was declared in August, 2015, Respondent No.1 managed to score only 55 in Physics, 54 in Chemistry and 33 in Maths. The average again worked out to about 47%. Therefore, even in the compartment examination, he did not fulfil the basic eligibility criteria.

20. It is inconceivable that a student can seek admission to the B. Tech course without being able to secure more than 33% marks in Mathematics on two consecutive occasions. It is stranger still that such student can still be admitted and then continue and complete a B. Tech course. The stipulated eligibility criterion for a B. Tech course cannot possibly be diluted to a point of absurdity. There can be no question of applying any principle of equitable estoppel as far as this basic criterion is concerned.

21. The mere fact that the affiliated college where Respondent No. 1 was pursuing the course did not inform the Appellant-University well in time will not come to the aid of the Respondent No. 1. He was clearly conscious of the minimum eligibility criterion which is why he sat for the compartment exam. He was aware that even under compartment exam, for the second time, he did not meet the basic eligibility criteria. Therefore, it is not open for Respondent No. 1 to now plead that his admission to the B. Tech course should not be cancelled.

22. Clearly, the admission was on provisional basis and was dependant on his qualifying in the 12th standard exam by meeting the minimum criteria before 15th October, 2015, which was the cut-off date. If he could not, he obviously had to lose his seat for the academic session 2015-16. The fact that for the third time, by way of a second improvement, he qualified in March 2016 will not protect his admission for the academic year 2015-16.

23. Having correctly determined that “the order of cancellation of the admission of the Petitioner thus suffers from no infirmity”, the learned Single Judge erred in holding that on the on the principle of equitable estoppel, the Appellant University could not have cancelled the admission of Respondent No. 1.

24. Learned counsel for the Respondent No. 1 again relied on those very decisions that were referred to by learned Single Judge. The facts in *Sanatan Gauda v. Behrumpur University* (*supra*) concerned admission to the law course that the candidate passing the M.A examination with 36% in

the aggregate. There it was noted that under the Regulations ‘the aggregate of 40% and above marks is required only for graduates and there is no requirement of any percentage of marks prescribed for the post graduates.’ It was for that reason that the Supreme Court held that securing of 36% marks in the post graduate examination would not make candidate ineligible to take the law course since admittedly he had secured the eligibility criteria on basis of his graduate course. Clearly, therefore, this decision is of no help to Respondent No.1.

25. As far as the decision in *Sangeeta Srivastava v. Prof. U.N. Singh* (*supra*) is concerned, despite the University telling the College to cancel the admission in August or October 1978, the College continued to treat her as a regularly admitted student as was evident when even eight months thereafter, the College addressed a letter to the Controller of Examination asking that the Appellant there be given her Roll No. for the examination.

26. In the present case, however, it was the College which informed the University on 1st December, 2016 of the ineligibility of Respondent No. 1 and immediately thereupon University cancelled his admission. Therefore, he came to this Court. There was no interim order in his favour and in fact he has not sat for his fourth or fifth semester exam. Consequently, even this decision is of little assistance to Respondent No.1.

27. In any event, there is not a single decision that has been brought to the notice of this Court where for the B. Tech course, a candidate who does not secure even 40% marks in the Mathematics paper is allowed to not only get

admitted to the B. Tech Course but allowed to continue and complete. This is simply unacceptable from even the basic standard of University education.

28. Consequently, this Court is of the view that in matter of such nature, there could be no question of equitable estoppel coming to the aid of the student. Ms. Sikri, learned counsel for the Appellant, has drawn the attention of the Court to the judgment in ***Maharashi Dayanad University v. Surjeet Kaur (2010) 11 SCC 159*** where the Supreme Court observed, in matters concerning admission to academic institutions, in paras 18 and 19 as under:

“18. There can be no estoppel/promissory estoppel 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 estoppel being an equitable doctrine, must yield when the equity so requires. (vide *Dr. H.S. Rikhy v. The New Delhi Municipal Committee* AIR 1962 SC 554; *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu* (1999) 6 SCC 464; *Shish Ram v. State of Haryana* (2000) 6 SCC 84; *Chandra Prakash Tiwari v. Shakuntala Shukla* (2002) 6 SCC 127; *I.T.C. Ltd. v. Person Incharge, AMC, Kakinada* AIR 2004 SC 1796; *State of U.P. v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti* (2008) 12 SCC 675; and *Sneh Gupta v. Devi Sarup* (2009) 6 SCC 194).

19. On the other hand, the conduct of the respondent was such that even though she had no statutory right or any vested right to pursue her B.Ed. course, the mistake on the part of the appellant to allow her to appear in the examination cannot be by any logic treated to be a conduct of the appellant to confer any such right on the respondent. The rules and regulations cannot be allowed to be defeated merely because the appellant erroneously allowed the respondent to appear in the B.Ed. examination. The records reveal that the respondent did not challenge the cancellation of her results in respect of 1995 examination. The said order attained finality. Respondent straightaway approached the

District Forum in the year 2000 for the conferment of B.Ed. degree in pursuance of the examinations conducted under the Notification dated 16.3.1998. This, in the opinion of the court, was a totally misdirected approach and the District Forum fell into error by granting the relief.”

29. For the aforementioned reasons, the Court sets aside the impugned judgment of 18th July, 2017 of the learned Single Judge. The writ petition filed by Respondent No. 1 will be treated as dismissed. The appeal is allowed and the pending applications are disposed of but, in the circumstances, with no order as to costs.

CM No. 34520/2017

30. For the reasons stated in the application, the delay in filing the appeal is condoned. The application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 07, 2018

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