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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on:-21.02.2018.
Date of Decision:- 15.03.2018.

+ W.P.(C) 10612/2017
NIKHIL SHARMA

..... Petitioner

Through Ms.Priyanka Sharma Goswami
with Ms.Anusuya Sadhu Sinha,
Ms.Amrita Sharma and
Mr.Javedur Rahman, Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
AND ANR.

..... Respondent

Through Mr.Ekta K.Sikri with Mr.Jasbir
Bidhuri, Advs for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The Petitioner, a first year student of B.Tech Electrical and Electronics Engineering (EEE) Program at Respondent No.2/ Institute (which is affiliated to Respondent No. 1/University), has approached this court *vide* the present petition under Articles 226 and 227 of the Constitution of India seeking *inter alia* quashing of the letter dated 14.11.2017 issued by Respondent No. 1/University, whereby his admission to the B.Tech (EEE) Program at Respondent No. 2/Institute was cancelled. The Petitioner is also praying for a direction to the Respondents to restore his admission in Respondent No. 2/Institute in the B.Tech (EEE) Program for the Academic Session 2017-18. The Petitioner also seeks quashing of Instruction No. 17 in the admission brochure issued by Respondent No.

1/University on the grounds that it is arbitrary, vexatious, unreasonable and unconstitutional.

2. The brief facts of the case as are necessary for the adjudication of the present petition are that the Petitioner, a Science Stream student, appeared for his Class 12 Board Examination in March 2015. Pursuant to the Petitioner clearing the aforesaid exams, CBSE issued him a Pass Certificate and a Marksheet dated 25.05.2015, according to which he had secured 66 marks in English (Core), 58 marks in Mathematics, 63 marks in Physics, 71 marks in Chemistry and 66 marks in Physical Education. However, as the Petitioner intended to take the Joint Engineering Examination (JEE) (Main), he was desirous of improving his performance in Mathematics, Chemistry and English (Core). Accordingly, he applied for an Improvement Examination for the three subjects as per Clause 44.1 of the CBSE Examination Bye-Laws, which prescribes that only those candidates who had passed the board examination may re-appear for an improvement of performance in one or more subjects in the succeeding year only. Though the Petitioner was initially confirmed as a '*Private Candidate*' for the same *vide* receipt dated 13.10.2015 issued by CBSE, in January 2016, he learnt about a notice dated 23.09.2015 issued by CBSE, according to which the students who intended to apply for the JEE (Main) in the subsequent year, had to appear for an improvement in all the subjects and not merely in the subjects of their choice.

3. In these circumstances, the Petitioner applied for an improvement in all five subjects *vide* his application dated

14.01.2016, pursuant to which the Petitioner appeared for the said improvement exams as a '*Private Candidate*' and was issued a marksheet dated 21.05.2016 by the CBSE, in which the Petitioner secured 89 marks in English (Core), 67 marks in Mathematics, 61 marks in Physics, 71 marks in Chemistry, and 46 marks in Physical Education with FT, i.e. '*Failed in Theory in Physical Education*'.

4. Upon the Petitioner not faring well in the JEE, he appeared for the Common Entrance Test (CET) conducted by Respondent No. 1/University for admission to its B.Tech Program. He also simultaneously applied for admission to the B.Tech Program at Amity University affiliated with Respondent No. 1/University and to the Gautam Buddha University for a course in Food Processing Technology. The eligibility conditions for admission in its B.Tech Program were set out in the admission brochure issued by Respondent No. 1/University for the Academic Session 2017-18 and Clause 2 thereof reads as under:-

"pass in 12th Class of 10+2 pattern of CBSE or equivalent with the 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 a subject of study (code/elective/functional) in the qualifying examination."

5. Based on his marksheets for the 2015 exams and the 2016 improvement exams respectively, the Petitioner applied for admission to the B.Tech Program under the Management Quota in the Respondent No. 2/Institute. After checking all his documents, including the two marksheets, the Petitioner was asked to submit the

requisite fees, which he did, and on 01.08.2017, he was duly issued the student identity card which was valid till 30.06.2021. Upon getting admission in Respondent No. 2/Institute, the Petitioner withdrew his candidatures from Amity University as well as Gautam Buddha University and started attending his classes regularly in Respondent No. 2/Institute from 02.08.2017 itself.

6. In November 2017, the Petitioner also appeared for both the Internal and External Practical Examinations conducted by Respondent No. 1/University. On 15.11.2017, during the course of his Chemistry Practical Examination, the Petitioner was handed over a copy of the impugned letter dated 14.11.2017 (hereinafter referred to as the “Impugned Letter”) issued by Respondent No. 1/University, according to which his “provisional” admission to the B.Tech Program in Respondent No. 2/Institute stood cancelled with immediate effect, due to non-submission/ non-fulfilment of eligibility criteria as per the admission brochure for the Academic Session 2017-18.

7. The Petitioner claims that upon receiving the Impugned Letter, he approached the authorities to know the reason for cancellation of his admission and it was only on 21.11.2017, he was informed by the Joint Registrar of Respondent No. 1/University that his admission had been cancelled in accordance with Instruction No. 17, set forth in Section 1.8 (titled as 'Important Instructions'), of the admission brochure issued by Respondent No. 1/University and the same reads as under:-

"17. If a candidate clears the qualifying examinations in a particular year (A), and in the subsequent year (B) appears in the improvement examination, then in the year (B) or later, if the candidate applied on the basis of the qualifying examination, the result of the examination held in the year B shall be used for calculation/verification of eligibility for all papers for which result was declared by the examining body of the qualifying examinations in the year B."

8. Aggrieved by the sudden cancellation of his admission by Respondent No. 1/University, after almost four months of his admission and without even giving him any show cause notice, the Petitioner has preferred the present petition challenging *inter alia* the Impugned Letter issued by Respondent No. 1/University. On 01.12.2017, when the petition was listed for preliminary hearing, this Court permitted the Petitioner to appear in the exam slated for 04.12.2017. Thereafter, while issuing notice in the petition, the Court vide its order dated 05.12.2017 permitted the Petitioner to sit in the remaining exams of the first semester, though with a rider that his results would be declared only subject to the final outcome of the petition. The Petitioner had, accordingly, appeared in the first semester examination but till date neither his result has been declared nor has he been permitted to attend classes in the Respondent No. 2/Institute.

9. Both the Respondents have filed separate counter affidavits opposing the petition. The main thrust of the pleas raised by both the Respondents is that the Petitioner did not fulfill the eligibility criteria prescribed in the admissions brochure, as he had admittedly failed in

the 'Physical Education Theory Examination' in the Improvement Examination conducted by CBSE in 2016. As per the admission brochure, it was only his performance in this subsequent improvement examination which was relevant for determining his eligibility for admission in the B.Tech program in Respondent No. 2/Institute. The Petitioner, having failed in one of the subjects in this examination, allegedly did not fulfill the eligibility conditions laid down in Clause 2 of the admission brochure.

10. Arguing for the Petitioner, Ms. Priyanka Goswami submits that the Impugned Letter has been passed on a factually erroneous premise as it records that the Petitioner's *provisional* admission was being cancelled due to non-submission/non-fulfillment of eligibility criteria. She submits that the Petitioner's admission in the Respondent No. 2/Institute was never provisional and, in fact, since the Petitioner duly fulfilled the admission conditions and all the eligibility criteria, his admission from the very beginning was final. While drawing my attention to Paragraph 3.8 of the admission brochure issued by Respondent No. 1/University, she submits that the question of provisional admission arises only in cases where the result is awaited and not in cases like the Petitioner, where the candidate had already passed the class 12th examination much prior to the date of admission.

11. Ms. Goswami submits that as per the examination bye-laws of CBSE, a candidate who opts for an improvement examination does not forfeit the result of his/her earlier examination, in which examination the Petitioner had admittedly passed in all the subjects.

Therefore, the Respondents cannot take a contrary stand and come to a conclusion that the Petitioner, having failed in Physical Education Theory Paper in the improvement exam 2016, did not meet eligibility criteria for admission to the B.Tech program, when he had fulfilled the eligibility conditions as per the pass certificate issued to him by the CBSE in 2015 itself, which certificate continues to be valid. Ms. Goswami has relied upon a decision of this Court in ***Poonam v Guru Gobind Singh Indraprastha*** [WP(C) 8242/2016] in support of her plea that once CBSE, which conducts the examination and declares the result of the Class 12th examination, clearly provides in its examination bye-laws that the marksheets of both the initial exam and the improvement exam are valid, the University cannot simply ignore the result of the Petitioner in the initial examination by relying on an instruction in its admission brochure. She submits that such an instruction is wholly arbitrary, unreasonable and would result in an anomaly and discrimination. Ms. Goswami further submits that even otherwise, once the Petitioner had been granted unconditional admission in the Respondent No. 2/Institute on 01.08.2017, whereafter he withdrew his candidature from Amity University and Gautam Buddha University, the Respondents could not have cancelled his admission in the Respondent No. 2/Institute and that too at a belated stage.

12. While impugning Instruction No. 17 of the admission brochure, on the basis of which the Petitioner's admission was cancelled, Ms. Goswami contends that the said Instruction, besides being contrary to CBSE's bye-laws, was even otherwise arbitrary and discriminatory.

She submits that the Respondents have failed to even state the object sought to be achieved by inserting such an instruction, which makes a student who has cleared the class 12th examination in his first attempt, ineligible for admission merely because he did not perform equally well in the Improvement Examination.

13. Ms. Goswami also contends that the Impugned Letter is a non-speaking order passed without due application of mind and is also violative of the Principles of Natural Justice, Equity and Fairness, since the Petitioner's admission had been cancelled without even issuing him a Show Cause Notice or giving him any opportunity of being heard.

14. Ms. Goswami has also placed reliance on a decision of this Court in ***Ram Narayan Tiwari v. Guru Gobind Singh Indrapastha University*** [2017 SCC Online Del 9253] to contend that once the Petitioner had disclosed both his marksheets at the time of applying for admission, the Respondents could not subsequently after a lapse of almost four months cancel his admission, especially by ignoring the fact that as per the CBSE bye-laws, he stood passed in Class 12th. She contends that, in view of the undisputed position that the Petitioner had neither concealed any fact nor made any misrepresentations, the cancellation of his admission at such a belated stage, when he had already spent approximately 4 months in the course of study and lost the opportunity of getting admission to any other institute or college, was wholly unjust, arbitrary and unfair.

15. On the other hand, Ms. Ekta Sikri, appearing for the Respondent No. 1/University, while opposing the petition, submits

that the Petitioner's admission has been rightly cancelled as he did not meet the eligibility criteria prescribed in clause 2.1.4 of the admission brochure. She submits that the eligibility criteria were to be met by the Petitioner on or before the cut-off date of 15.10.2017, which is sacrosanct. Therefore, the Petitioner admittedly having not passed in the theory part of his physical education improvement exam, which alone was the relevant exam for determining his eligibility criteria in terms of Instruction No. 17, the actions of the Respondents in cancelling his admission in Respondent No. 2/Institute, could not be faulted. Ms. Sikri further submits that Instruction No. 17 was absolutely unambiguous, plain and simple and it clearly laid down that in a case of a candidate who appears in the improvement exam, it is that result which is to be used for calculating/verifying his eligibility. She further submits that once the language of the instruction was capable of only one interpretation, it was the Petitioner's responsibility to ensure that he fulfilled the said criteria and merely because the Respondent No. 2/Institute had erroneously granted admission to the him, the Respondent No. 1/University could not be compelled to regularize the admission of a person who did not meet the eligibility criteria prescribed in its admission brochure.

16. Ms. Sikri further submits that Respondent No. 1/University had informed Respondent No. 2/Institute promptly about the Petitioner's ineligibility for admission and draws my attention to letter dated 15.09.2017 to contend that the Respondent No. 2/Institute was informed well in time about the Petitioner's ineligibility for seeking

admission in the B.Tech program. She, therefore, contends that there was no delay on the part of the Respondents in informing the Petitioner about his ineligibility. Ms. Sikri relies on the decision of this Court in the case of **Varun Kumar Aggarwal v. Union of India** [(2011) 179 24 DB] and an unreported decision of this Court in the case of **Pooja Verma v. Guru Gobind Singh Indrapastha University** in WP(C) 3835/2016 dated 03.05.2016, in support of her plea that the conditions in the admission brochure are sacrosanct and are binding on both the students and the university. She also places reliance on decisions of this court in **Siddhartha Kaul & Ors. v. GGSIPU** in WP(C) 7610 of 2011 and **Thufail & Ors. v. University of Delhi & Ors.** reported as (2015) 221 DLT 473, to contend that educational institutions are the best judges to impose appropriate restrictions and conditions on admission and, merely because the conditions are found to be inconvenient to some students, the same cannot be held to be arbitrary. She submits that even otherwise, the Petitioner was deemed to be fully aware of the conditions in the admission brochure at the time of taking admission and not having challenged the same before taking admission, he was estopped from challenging the same after having taken admission on basis of the admission brochure.

17. Ms. Sikri further contends that the decision of this court in the case of **Poonam v Guru Gobind Singh Indrapastha University** (*supra*), on which heavy reliance has been placed by the Petitioner, is not at all applicable to the facts of the present case, since that decision related to a student who was admitted when there was no specific condition in the form of Instruction No. 17 in the admission

brochure laying down that it is only the result/marksheet of the improvement examination which shall be taken into consideration. She contends that in the present case, the Petitioner is bound by Instruction No. 17, which clearly prescribes that the result of the improvement exam alone would be material in determining his eligibility for admission. Ms. Sikri further contends that even otherwise, there is no conflict between the CBSE bye-laws and the Respondent No. 1/University's instructions, as is sought to be contended by the Petitioner. She submits that CBSE is one of the many boards for conduct of exams and issuance of marksheets, which are then considered by different universities for prescribing their own admission procedures, and each university across the country has its own practice with regard to the marksheet issued by CBSE.

18. Having considered the rival submissions of the parties, I find that the first and foremost issue which has been pressed by the learned counsel for the Petitioner is whether once the CBSE, which is the recognized Board for holding examinations, has unequivocally opined that both the marksheets of the Petitioner are valid and that the improvement exam does not invalidate the first result, can the Respondent No. 1/University issue instructions that bring the Petitioner's original result to a naught, such that despite the CBSE treating the Petitioner as having passed, the Respondent No. 1/University can treat him as failed. Thus, the issue would depend on the meaning of the term 'improvement examination'. Does it mean that the candidate has been given an opportunity to improve his/her

performance or would it mean that the original result of the candidate becomes null and void?

19. The second issue which arises in the present case is whether once the Petitioner has been granted unconditional admission to the Respondent No. 2/Institute on 01.08.2017, could the Respondent No. 1/University cancel his admission on the ground that he does not fulfill the eligibility criteria, as per the performance in the improvement exam, by claiming that the Petitioner's admission was only provisional, even though nothing has been placed on record to show that his admission was ever treated as provisional. The question which needs to be considered is, even if it were to be taken that the Respondent No. 1/University had the right to cancel the admission of a student in such circumstances by ignoring his original performance, was the Respondent No. 1/University justified in doing so at such a belated stage?

20. Before examining the aforesaid issues, it would be appropriate to refer to the bye-laws dealing with the improvement examination which read as under:-

44. Improvement of Performance/Upgrading of Performance

44.1 Senior School Certificate Examination

(i) A candidate who has passed an examination of the Board may reappear for improvement of performance in one or more subjects in the succeeding year only; however, a candidate who has passed an examination of the Board under Vocational Scheme may reappear for improvement of performance in the main examination in the succeeding year or the following year provided they have not pursued higher studies in the mean time. They will appear as private

candidates. Those reappearing for the whole examination may, however, appear as regular candidates also if admitted by the school as regular candidates. The candidate(s) appearing for improvement of performance can appear in the subject(s) in which they have appeared for the Examination.

(ii) For subjects involving practical work, in case the candidate has passed in practical at the main examination, he/she shall be allowed to appear in the theory part only and marks in practical obtained at the main examination shall be carried forward and accounted for. In case a candidate has failed in practical he/she shall have to appear in theory and practical both irrespective of the fact that he/she has already cleared the theory examination.

(iii) Candidates who appear for improvement of performance will be issued only Statement of Marks reflecting the marks of the improvement examination.

(iv) A candidate appearing for improvement of performance in one or more subjects cannot appear for additional subject simultaneously.

(v) Candidates appearing in six subjects at the Senior School Certificate Examination having been declared 'Pass' by virtue of securing pass marks in five subjects as per Rule 40.1(iv) may appear in the failing main subject at the Compartment Examination to be held in July the same year provided he/she had appeared at the Examination held in March in the said subject.

21. Since, the same issue was dealt with at length by this Court in the case of **Poonam** (*supra*), it would be appropriate at this stage to refer to the relevant paragraphs of the aforesaid decision:-

"22. The Bye-Laws do not stipulate that a candidate who opts for an improvement examination forfeits the result of the earlier examination. Candidates are not even put to notice that if they opt to take an improvement examination, they would forfeit their earlier result.

23. There may be situations where a candidate fails in a paper of the main examination and per force has to appear in the improvement examination. In such a situation, the candidate has no option but to rely upon only the result of the improvement examination. But there may be situations where a candidate has otherwise passed the examination but for other reasons wishes to improve his/her result. In such situations, making a candidate forfeit the earlier result and that also without putting the candidate to notice that the earlier result would be forfeited would cause grave prejudice and hardship to the candidate.

25. A candidate who has otherwise passed an examination and wishes to merely better the earlier performance, may not exercise such an option, if he/she were informed that the earlier result would be forfeited. Furthermore, the stand of the CBSE is not that the result of the earlier examination is forfeited. The stand is that they do not issue a consolidated mark sheet but issue a mark sheet of only the improvement examination. The candid admission on the part of CBSE is also that the earlier mark sheet is not cancelled and continues to remain valid. If the first mark sheet is not cancelled and remains valid, then the marks obtained by the candidate in the first examination would also stand and the candidate would be entitled to choose the better of the two, unless the same is excluded by any rule or regulation.

26. Post appearing in the improvement examination, candidates retain possession of both the mark sheets. As per both the counsel for the University and the CBSE, if a candidate appears in an improvement examination and he is not able to better his performance, that candidate can still seek admission by presenting his earlier mark sheet. If such a situation is acceptable, then how can the University refuse to accept the better of the two marks obtained by a candidate.

30. It is CBSE which conducts the examination and declares the result of Class XII. Once a Mark Sheet has been issued by CBSE declaring a candidate as passed in 12th Class, then the University cannot go behind the Mark Sheet. If a candidate has qualified as per CBSE and both the mark sheets are valid then the University in absence of any rules to the contrary would not be justified in denying admission to a candidate. When CBSE rules do not

stipulate that the marks of the earlier examination would be forfeited, then the University cannot deem them to be forfeited and that also on the basis of an unwritten practise.

37. It is clarified that this court has not examined, the scope of power of the University to impose a condition that it would only consider the marks obtained in an improvement examination or the validity thereof because no such rule has been framed. This question is left open."

22. Having examined the aforesaid bye-laws and the decision of this Court in the case of **Poonam** (*supra*), I find that the role of the Respondent No. 1/University was only to examine the results as provided by the CBSE, as it is only the CBSE which conducted the qualifying exam, based on the results whereof the Respondent No. 1/University could determine whether a candidate meets the eligibility criteria or not. In my considered opinion, Respondent No. 1/University cannot be allowed to go behind the marksheets issued by the CBSE or for that matter any other Board holding the qualifying exam. In view of the admitted position, that as per the CBSE both the Petitioner's marksheets are valid, the University cannot by introducing an instruction in its admission brochure, nullify the result of the candidate, which continues to be valid as per the CBSE since the candidate was merely given a chance to improve his result by taking an improvement exam. Learned counsel for the Respondent No. 1/University has not disputed the position that the result of the Petitioner's initial exam held in 2015 does not become invalid merely because he appeared in the improvement examination in 2016. I find that on the other hand, the position which emerges from a perusal of the bye-laws of the CBSE is that in such a

situation, where a candidate appears for an improvement exam, his result/marksheet of the original examination remains fully valid.

23. Even though the learned counsel for the Respondent No. 1/University has laid great emphasis on the fact that the said Instruction had clearly put the student to notice that only the result of the improvement examination would be considered, since it was a part of the admission brochure pursuant to which the Petitioner had applied for admission, I find merit in the submission of the learned counsel for the Petitioner that the said instruction virtually nullifies the policy of CBSE for holding of improvement exam. In my considered opinion, it is not at all open to the Respondent No. 1/University to override the decision of CBSE and treat the result and marksheet of the original examination in which the Petitioner had appeared as invalid, merely because he appeared in an improvement exam. There can be no doubt about the settled legal position that Respondent No. 1/University has full autonomy in respect of academic matters and the Courts ought not to interfere with the academic standards set up by educational institutions. However, the issue here is slightly different. While Respondent No. 1/University was fully justified in prescribing a particular eligibility criteria for admission and the same ought not to be interfered with lightly by the Court, the present case shows that the University seeks to ignore the result of the Petitioner's initial examination, which continues to be valid as per the CBSE and based on which the Petitioner has been declared as having passed in each subject of the Class 12th exam. Thus, it is not the eligibility criteria for admission

but the manner in which the Respondent No. 1/University is insisting on ignoring a valid class 12th result and marksheet issued by CBSE, which is being examined by this Court. This action of the Respondents is wholly unfair, arbitrary and cannot be sustained. Instruction No. 17 issued by Respondent No. 1/University is not only arbitrary and contrary to the CBSE bye laws, but is also discriminatory and unfair.

24. Ms.Sikri, learned counsel for Respondent No.1/University has also placed reliance on various decisions of this Court as well as the Supreme Court to contend that the Petitioner had applied to the Respondent No. 2/Institute pursuant to the admission brochure containing Instruction No. 17 and, therefore, he could not at a subsequent stage now challenge the same. In view of a glaring fact which emerges from the record, that the said Instruction was not at all applied to the Petitioner when he was granted admission in the Respondent No. 2/Institute, as also the fact that his admission was never stated to be provisional in the documents issued to him at the time of his admission, I see no reason why the Petitioner ought to have challenged the said Instruction prior to taking admission. On the other hand, in view of the admitted position that the Petitioner was granted unconditional admission inspite of submitting both his marksheets, I find that there was every reason for him to believe that the said Instruction was not being followed and not mandatory in any manner.

25. Before dealing with the second issue as to whether the Respondent No. 1/University could have at such a belated stage

cancelled the Petitioner's admission, it would be appropriate to refer to Paragraph 3.8 of the admission brochure, which is the only provision in the Respondent No. 1/University's admission brochure dealing with provisional admission:-

“3.8 Result Awaited Cases For Engineering, B.Arch. & Professional Programmes (Except for NEET based admissions)”

1. Result Awaited / Compartment / Supplementary Cases

i. All such candidates who have appeared in the qualifying examination (irrespective of the outcome of their final result) will be eligible to appear in the CET 2017-18 and all such candidates will be provisionally admitted in the respective programmes; provided that the examination of the qualifying programme of study on the basis of which admission is sought is over before the commencement of classes in the University for the programme of study in which admission is sought. Further, such provisionally admitted candidates will have to fulfill his/her eligibility as per the eligibility laid down in the admission brochure, latest by October 15, 2017.

ii. All such candidates whose result is awaited, will have to submit an undertaking / self-declaration form at the time of admission/ verification of document (schedule to be notified later) in the prescribed Proforma (to be made available on or before 28th February, 2017). Further, in case the candidate is minor i.e. below 18 years of age; in that case, the affidavit shall be signed by his/her parent/guardian. Candidates/parents/guardians may further note that submission of false affidavit is a punishable offence;

iii. The candidate will have to submit the final result of qualifying degree proving his/her eligibility on or before October 15, 2017 to their Concerned Dean/Principal/Director of their respective

School/College/Institute where the admission has been granted. The concerned Dean/Principal/Director must submit the details of the results of these provisionally admitted students by October 18, 2017, to the Incharge (Admissions), Academic Reception Counter, Administrative Block, GGS Indraprastha University, Sec 16 C, Dwarka, New Delhi-110078, duly signed by the concerned Dean/Principal/Director;

iv. In case the candidate fails to submit his/her final result of qualifying degree in the manner as prescribed above to prove his/her eligibility on or before October 15, 2017, whatsoever the reason may be, his/her admission will be treated as null and void (cancelled) and the entire fee will be forfeited and under no circumstances he/she will be allowed to appear in the End Term Exam. If such an admitted student appears for the examination and even if the result of such students is declared, the candidature of such provisionally admitted candidates shall be cancelled and the result declared as null and void. No extension beyond October 15, 2017 shall be allowed by the university in any case”.

26. A perusal of Paragraph 3.8 shows that it deals with cases where candidates have been provisionally admitted and the said clause, therefore, prescribes that the provisionally admitted candidates have to fulfill the eligibility criteria as per the conditions laid down in the admission procedure latest by 15.10.2015. The plain language of paragraph 3.8 shows that the said clause is applicable only to students whose admission was provisional on the ground of their result being awaited. I find merit in the submission of the learned counsel for the Petitioner that Paragraph 3.8 could not be made applicable to cases like the Petitioner, where the candidate/student had already submitted his/her marksheet at the time of seeking

admission. In my considered opinion, the reliance by the Respondent No. 1/University on paragraph 3.8 is wholly misplaced and in fact is an attempt on its part to somehow brand the Petitioner's admission as provisional, when in fact it was not provisional in any manner.

27. I also find merit in the submission of the learned counsel for the Petitioner that, had the Petitioner been informed in August itself that he was not eligible for admission in the Respondent No. 1/University, he would have taken admission in some other college in any other University. The burden of the Respondent No. 1/University's arbitrary admission policy, the anomaly between the admission procedures of the Respondents, and the inexplicable delay in communicating the Petitioner's alleged ineligibility to him, ought not to fall on the Petitioner's shoulders, lest his fundamental rights to life and equality are gravely violated. The Respondents are estopped from cancelling the admission of the Petitioner at this belated stage, especially in light of the following undisputed facts that:-

- a. The Petitioner had disclosed all the information regarding his first result as well as the improvement result and had not misrepresented any material fact to the Respondents;
- b. It is not a case where the Petitioner had actually not passed Class 12 but is a case wherein he was unable to clear one of the papers in his improvement examination; and

c. Even otherwise, Instruction No. 17 was given a clear go-by by the Respondents themselves when granting unconditional admission to the Petitioner on 01.08.2017.

In this regard, it may be relevant to refer to the judgment of this Court in ***Ram Narayan Tiwari v Guru Gobind Singh Indraprastha University*** [2017 SCC Online Del 9253], wherein this Court applied the principle of equitable estoppel to disallow a University from refusing a candidate to appear in his examinations when he had placed all material facts before the University and had not committed any fraud or misrepresentation. Reliance may also be placed on the decision of the Supreme Court in the case of ***Sanatan Gauda v Behrampur University*** reported as AIR 1990 SC 1975 where by applying the principles of legitimate expectation and equitable estoppel, the Petitioner was allowed to complete his B.Tech Course. Paragraph 3 of ***Sanatan Gauda*** (*supra*) reads as under:-

“3....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.”

28. The contention of the learned counsel of the Respondent No. 1/University, that there was no delay on the part of Respondent No. 1/University in cancelling the Petitioner's admission since it had (vide its letter dated 15.09.2017) informed Respondent No. 2/Institute of the Petitioner's ineligibility in terms of Instruction 17, is without any merit as there is nothing to show that the said letter was ever communicated to the Petitioner. On the other hand, it emerges from the record that on 13.11.2017, the Respondent No. 2/Institute had replied to the aforesaid letter by stating that even though the Petitioner had failed in one subject in the improvement examination in 2016, he fulfilled the eligibility criteria with respect to 2015 exam, and his admission may be regularized on the basis of his result in the 2015 examinations. However, the fact of even this correspondence between Respondent No. 1/University and Respondent No. 2/Institute was not in the knowledge of the Petitioner.

29. Before I conclude, it would also be appropriate to deal with the various decisions relied upon by the learned counsel for the Respondent No. 1/University in support of her plea that the condition in the admission brochure is binding on the students. While there can be no doubt that the conditions in the admission brochure are binding on both the students and the Respondent No. 1/University, the Respondent No. 1/University cannot introduce such criteria in the admission brochure that are contrary to or inconsistent with the directions/rules/regulations of the various statutory/government bodies, including CBSE. The effect of Instruction 17 is that it

virtually challenges the result declared by the CBSE, which alone is competent to decide whether the Petitioner had obtained the requisite marks in his Class 12 exams. Furthermore, in the case of an improvement examination the aforesaid instruction seeks to invalidate the first result, which result the CBSE has unequivocally declared to be valid in its bye-laws. Therefore, such an instruction in the admission brochure is wholly arbitrary, illegal and cannot be sustained.

30. Accordingly, Instruction No. 17 in the Respondent No. 1/University's admission brochure and the Impugned Letter dated 14.11.2017 issued by Respondent No. 1/University are quashed. The Respondents are directed to immediately restore the Petitioner's admission and permit him to take all the examinations, which he has missed due to the passing of the Impugned Letter. The Respondents are also directed to ensure that the Petitioner is able up to cover up the loss of attendance by holding extra classes for him, if required.

31. The writ petition is allowed in the above terms with no order as to costs.

न्यायमेव जयते

(REKHA PALLI)
JUDGE

MARCH 15, 2018/sr