

\$~

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

Judgement reserved on 05.11.2019
Judgement pronounced on 08.11.2019

+ **W.P. (C) 10629/2019 & CM APPL. 43895/2019**

UMANG BHARADWAJ Petitioner
Through: Mr. Nishant Anand, Mr. Sahil Garg, Mr. Akhilesh Kumar, Ms. Mansi Khanna, and Mr. Sarthak Katyal, Advocates.
versus
UNIVERSITY OF DELHI Respondent
Through: Mr. Mohinder J.S. Rupal, Ms. Aditi Shastri, Mr. Hardik Rupal, and Mr. Koushik Ghosh, Advocates for the University of Delhi.

+ **W.P. (C) 10639/2019 & CM APPL. 43921/2019**

PRAVEEN SAGAR Petitioner
Through: Mr. Nishant Anand, Mr. Sahil Garg, Mr. Akhilesh Kumar, Ms. Mansi Khanna, and Mr. Sarthak Katyal, Advocates.
versus
UNIVERSITY OF DELHI Respondent
Through: Mr. Mohinder J.S. Rupal, Ms. Aditi Shastri, Mr. Hardik Rupal, and Mr. Koushik Ghosh, Advocates for the University of Delhi.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface:-

1. The common grievance which the petitioners have articulated in their respective writ petitions concerns the resistance of the University of Delhi (in

short “the University”) in granting them admission to the LL.M. course *qua* the academic session 2019-2020.

1.1. The petitioner in W.P.(C) No.10629/2019 would be referred to as by his first name Mr. Umang while the petitioner in W.P.(C)No.10639/2019 will be referred likewise by his first name i.e. Mr. Praveen. Wherever the context so requires, Mr. Umang and Mr. Praveen would be collectively referred to as petitioners.

2. The petitioners aver that having qualified the Delhi University Law Entrance Test LL.M., 2019 (in short “2019 LL.M. Test”) and having acquired the basic qualification i.e. a degree in LL.B., they ought to have been granted the admission by the University in the 2019 LL.M. course.

3. The University, on the other hand, opposes the relief on the sole ground that on the cut-off date i.e. 31.08.2019, the petitioners did not possess the basic qualification i.e. had not passed their LL.B. course. This objection of the University stems from the fact that the petitioners had failed in some papers and, to qualify in those papers, they were required to take the supplementary exam.

3.1. The fact that the petitioners sat for the supplementary exam *qua* the papers in which they had failed is not in dispute. It is also not disputed by the University that the petitioners have passed the supplementary exam. The University’s objection is that though the petitioners qualified the supplementary exam, they did so after the cut-off date i.e. 31.08.2019.

3.2. It is in this context that the University takes the stand that on the cut-off date i.e. 31.08.2019 the petitioners did not possess the basic qualification i.e. did not fulfil the eligibility criteria. It is pertinent to note that the University permitted even those candidates to sit for 2019 LL.M. Test whose result *qua* the LL.B. course had not been declared on the date when the 2019 LL.M. Test was held.

3.3. As noted above, the petitioners who fell in this category were allowed to take the 2019 LL.M. Test which they, concededly, qualified.

3.4. Given this position, the petitioners state that the fact that they cleared their supplementary exam should put them in the same position as those who had qualified the LL.B. course on or before the cut-off date i.e. 31.08.2019.

3.5. In a nutshell, the petitioners seek to “relate” the result of their supplementary exam to the date, when, originally, the exam in the papers in which they had failed had been held.

4. It is in this background that these writ petitions have come up for adjudication. Thus, the core issue which arises for consideration is, whether, given this backdrop, it can be said that the petitioners possessed the basic qualification i.e. fulfilled the eligibility criteria on the cut-off date i.e. 31.08.2019.

5. Before I proceed further, I may briefly delineate the broad facts which concern each of the petitioners.

The petitioner in W.P. (C) 10629/2019 i.e. Mr. Umang Bharadwaj: -

6. Mr. Umang obtained admission in the 3-year LL.B. course of the University in the academic session 2016-2017. Each academic year of the LL.B. course comprises 2 semesters. Mr. Umang failed to qualify in the 4th semester and 6th semester in the following two papers respectively: LB 4033 (i.e. Competition Law) and LB 604 (i.e. Principles of Taxation Law).

6.1. Resultantly, Mr. Umang sat for the supplementary exam. The result of the exam was declared after the cut-off i.e. 31.08.2019.

6.2. In the interregnum, as noted above, Mr. Umang applied to sit in the 2019 LL.M. Test in the PWD category.

6.3. The petitioner claims, based on a certificate issued by Chief Medical Officer, Meerut that his disability has been pegged at 50%.

6.4. In the 2019 LL.M. Test, Mr. Umang attained success and was ranked 2nd in the PWD category.

6.5. The petitioner has placed on record a screenshot of the University's web-portal which is indicative of the fact that his request for admission in the first list was declined on the ground of non-payment of fee.

6.6. It appears, like Mr. Umang, there were other candidates whose admissions were cancelled on account of non-payment of fee and therefore, upon this being brought to the notice of the University, the date for processing the admissions was extended to 05.09.2019-06.09.2019 *qua* candidates whose names, though, appeared in the final admission list on 31.08.2019 had failed to appear and/or were unable to pay their fee by that date.

6.7. Mr. Umang asserts that he was made to believe that since the University Student Union's elections were on, the payment link on the web would be activated on 13.09.2019.

6.8. Mr. Umang also avers that like him several students who had not deposited their fee as the result of their supplementary exam had not been declared and therefore representations were made to the University for declaration of the result and for reopening the admission portal. This assertion made by Mr. Umang is backed by a representation dated 16.09.2019 which is addressed to the Dean, Faculty of Law and has been signed by him along with four other candidates.

7. It is also asserted by Mr. Umang that the aforementioned representation was followed by a letter dated 19.09.2019 which was addressed to the Vice-Chancellor of the University. This letter was also copied to other functionaries in the University *viz.* Dean, Faculty of Law; OSD (Admissions); Dean of Student Welfare; and the Registrar.

7.1. *Via* this letter, Mr. Umang requested the Vice-Chancellor to reopen the admission process for the LL.M. course as the result of the supplementary exam was likely to be declared at the end of the week that was to follow. It appears that the petitioner did not receive any response to the request made by him to

the Vice-Chancellor. It is in this background that Mr. Umang approached the Court for relief.

The petitioner in W.P. (C) 10639/2019 i.e. Mr. Praveen Sagar: -

8. Like Mr, Umang, Mr. Praveen obtained admission in the 3-year LL.B. course of the University in the academic session 2016-2017. Mr. Praveen failed to qualify in the 4th semester and 6th semester in the following two papers respectively: LB-4036 (i.e. Intellectual Property Rights Law-I) and LB-6031 (i.e. Interpretation of Statutes and Principles of Legislation).

8.1. Resultantly, Mr. Praveen also sat for the supplementary exam. The result of the exam was declared, as noted above, after the cut-off i.e. 31.08.2019.

8.2. In the interregnum, as alluded to above, Mr. Praveen applied to sit in the 2019 LL.M. Test in the Scheduled Caste (SC) category.

8.3. Mr. Praveen claims, based on a certificate issued by the Office of the Deputy Commissioner (North District), Delhi that he falls under the SC category.

8.4. Mr. Praveen, like Mr. Umang, qualified the 2019 LL.M. Test and was ranked 15th in the SC category.

8.5. Mr. Praveen has also placed on record a screenshot of the University's web-portal which is indicative of the fact that his request for admission in the first list was declined on the ground of non-payment of fee.

8.6. Insofar as the remaining assertions are concerned, that is, assertions about the date by the University for processing admissions *qua* candidates who had either not reported or had not paid their fee in time though their name appeared in the final admission list published on 31.08.2019, they are broadly similar to those made in Mrs Umang's petition.

8.7. This is also true *qua* the assertion made by Mr. Umang that he was given to believe that the payment link would be activated by the University on 13.09.2019. Furthermore, Mr. Praveen, like Mr. Umang, is also a signatory to

the representation dated 16.09.2019 addressed to the Dean, Faculty of Law whereby a request was made, that the supplementary exam results be declared and admission portal be reopened.

9. It is in this background that Mr. Praveen, like Mr. Umang, has approached this Court for relief.

General: -

10. The record shows that on 22.10.2019, orders were passed in W.P. (C) 10629/2019 and W.P. (C) 10639/2019 to reserve one seat, if available, in the LL.M. course for Mr. Umang and Mr. Praveen respectively.

Analysis and Reasons: -

11. Given the foregoing, the issue which arises for consideration is: Can it be said that the petitioners had acquired their basic qualification on or before the cut-off date (i.e. 31.08.2019) given the fact that the result of the supplementary exam was declared thereafter?

12. I must confess that my preliminary view in the matter was that the petitioners and those similarly circumstanced could have staked a claim for admission to the LL.M. course, 2019 only if they met the eligibility criteria on the cut-off date. However, before this view could be firmed up by me, it was brought to my notice that the Division Bench of this Court while dealing with admissions in the LL.B. course *qua* a similar issue had rendered a judgement which took a different view.

13. This judgement has been rendered by the Division Bench in the matter of *University of Delhi vs. Varun Kapur*, 2011 SCC OnLine Del 2077 : ILR (2011) 4 Del 565 : (2011) 179 DLT 549 (DB).

13.1. This was a case where the candidates before the Court were seeking admission to the LL.B. course. The candidates had sat for the LL.B. entrance exam and cleared the same.

13.2. The candidates also fulfilled the eligibility criteria which required them to secure at least 50% marks at the graduate or postgraduate level.

13.3. Both candidates before the Court were given provisional admission since their graduation results had been delayed.

13.4. Unfortunately, for the candidates, when their graduation results were declared, to their grief, they were faced with the news that they had failed in one subject and hence would have to take a supplementary exam to obtain a graduation degree.

13.5. In the supplementary exam, both candidates attained success. The results of the supplementary exam were, however, declared after the cut-off date fixed for the concerned academic session i.e. 2010-2011.

13.6. The cut-off date by which the candidates were required to produce documents to establish that they fulfilled the eligibility criteria (i.e. had acquired the basic qualification) was 31.08.2010.

13.7. The Division Bench while dealing with these facts and the issue that arose before it for consideration, which was, whether the result of the supplementary exam would relate to the date when the result for the main exam was declared, made the following observations in paragraph 7 to paragraph 12 of the judgement.

“7. There is merit in the plea sought to be urged by learned counsel for the University that if a cut-off date is prescribed by which eligibility has to be secured, an eligibility secured at a later date would be inconsequential, but the argument ignores the fact that where law requires something deemed to have come into existence, one cannot boggle down the consequence thereof and whatever logically flows from the deemed existence of a thing having come into being, the same has to be treated as having come into being.

8. In our opinion the University not having clarified, as observed by the learned Single Judge, that eligibility must be acquired at the main examination and not the supplementary, the alternative reasoning of the learned Single Judge merits acceptance.

9. If the University has any issue on the second reasoning, it is easily capable of being rectified inasmuch as the University can, in future, clearly stipulate in the bulletin information that eligibility, de-jure as also de-facto, has to be obtained by the cut-off date and that those who are placed in compartment would be treated as ineligible. Further, we see no reason why the University should not scrutinize the cases of provisional admissions by the cut-off date and bring an end to the issue the day next.

10. Learned counsel for the appellants concedes that it is too late in the day for the University to fill up the two vacant seats if respondents are held ineligible candidates on the ground as urged by the University, notwithstanding that both of them have cleared the supplementary examination and are deemed to be candidates having obtained Graduate degree at par with the rest.

11. Why should we not be situationalist [sic: situationist] Judges and not rationalist Judges? We think we should. It is not a case where wholly ineligible persons or persons who have obtained admission by dubious means would continue as students of the University of Delhi in the Faculty of Law. If we hold against the respondents, two seats would go abegging [sic: begging], and this in our opinion would be contrary to public interest and thus the compulsion of the situation compels us to be situationalist [sic: situationist] Judges and uphold the view taken by the learned Single Judge.

12. For the future years, the University of Delhi can certainly incorporate a clause in the bulletin information as observed by us in para 9 above.”

(Emphasis is mine)

13.8. It is also important to note that the Division Bench, while ruling in favour of the candidates, also took note of the fact that in the past, two other Division Benches of this Court had accepted the proposition that the result of the supplementary exam would relate to the main result.

14. These judgements are noted in paragraph 5 of the *Varun Kapur's* case. These are *Prashant Srivastava vs. CBSE*, AIR 2001 Delhi 28 and judgement dated 07.09.1999, in LPA No. 385/1999, titled *Neha Kattiyar v. CBSE*.

15. I must also place on record the fact that a full bench of the Punjab and Haryana High Court in *Rupinder Singh and Others vs. The Punjab State*

Board of Technical Education & Industrial Training, Chandigarh and Others, MANU/PH/1039/2001 has taken a contra view.

16. Insofar as I am concerned, I am bound by the view taken by the Division Bench of this Court. [See: **Central Board of Dawoodi Bohra Community and Another vs. State of Maharashtra and Another**, (2005) 2 SCC 673.]

17. It is in this context, I had asked Mr. Rupal, as he had appeared in **Varun Kapur's** case, as to whether the information bulletin issued for the academic session 2019-2020 took into account, *qua* the LL.M. course, the concerns expressed by the Division Bench of this court, *albeit, vis-a-vis* the LL.B. course, as far back as on 04.05.2011.

17.1. In response, Mr. Rupal, during the hearing held on 01.11.2019, had placed on record the following provision obtaining in the information bulletin:

“... Since 2011, the University Administration has discontinued the Practice of Condonation of Delay in Admission. Therefore, as per the University of Delhi Ordinance – II, admission in all the Postgraduate Courses are to be finalised by 31st August of the concerned Academic Session. ...”

17.2. Since *prima facie* this provision did not meet the concerns expressed by the Division Bench in paragraph 9 of **Varun Kapur's** case, I had asked Mr. Rupal to place before the Court the original record, to demonstrate that the purported change was brought about pursuant to the judgement rendered by the Division Bench in **Varun Kapur's** case. Accordingly, the matter was listed for hearing on 05.11.2019.

17.3. On 05.11.2019, Mr. Rupal was unable to place the original record before me. Given this circumstance, an adverse inference would have to be drawn that the aforementioned provision which finds mention in the information bulletin of 2011 was not incorporated pursuant to the judgement rendered in **Varun Kapur's** case.

17.4. Besides the aforesaid provision, Mr. Rupal did not draw my attention *qua* this aspect to any other provision in the information bulletin.

18. The result would be that I would have to assume that there is nothing stated in the information bulletin which puts the candidates to notice that if they get compartment in any subject, they would be ineligible for seeking admission even if they were declared as having passed those subjects in the succeeding supplementary exam.

19. As indicated hereinabove, it appears that apart from the judgement in *Varun Kapur's* case, two other Division Benches of this Court have held that the result obtained in the supplementary exam would relate back to the date when the result in the main exam was declared.

Conclusion: -

20. Thus for the foregoing reasons, this Court would have no choice but to allow the writ petition as judicial propriety requires me to follow the principle enunciated by the Division Bench of this Court in *Varun Kapur's* case.

21. Accordingly, the University will grant admission to Mr. Umang and Mr. Praveen in the LL.M. course upon fulfilment of requisite formalities. The petitioners will place, before the concerned authority, the original documents, and also deposit their requisite fee.

22. Given the fact that there has been some amount of delay because of the pendency of the matter in Court, for the reasons stated above, the University will make suitable adjustments *qua* attendance and in this behalf, if necessary, will hold extra classes for the petitioners.

23. The captioned writ petitions are disposed of in the aforesaid terms. Resultantly, CM APPL. 43895/2019 and CM APPL. 43921/2019 shall stand closed.

RAJIV SHAKDHER, J

NOVEMBER 08, 2019