

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

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Reserved on: 28.11.2019
Date of decision: 03.12.2019

+ **LPA 729/2019 & C.M. Appls.50303-50304/2019**

UNIVERSITY OF DELHI Appellant
Through: Mr. Mahinder J.S. Rupal, Mr.
Koushik Ghosh, Ms. Manisha Relia,
Advocates

Versus

PRAVEEN SAGAR Respondent
Through: Mr. Sahil Garg, Mr. Akhilesh Kumar
Mishra and Ms. Mansi Khanna,
Advocates

+ **LPA 734/2019 & C.M. Appls.50516-50517/2019**

UNIVERSITY OF DELHI Appellant
Through: Mr. M.J.S. Rupal, Mr. Koushik
Ghosh, Ms. Manisha Relia,
Advocates

Versus

UMANG BHARDWAJ Respondent
Through: Mr. Sahil Garg, Mr. Akhilesh Kumar
Mishra and Ms. Mansi Khanna,
Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. The appellant/University of Delhi has filed two intra-court appeals being aggrieved by the common judgment dated 08.11.2019 whereby, it has been directed to grant admission to Praveen Sagar [respondent in LPA

729/2019 arising from W.P.(C) 10639/2019] and Umang Bhardwaj [respondent in LPA 734/2019 arising from W.P.(C) 10629/2019], in the LL.M. course upon fulfilment of requisite formalities with a further direction that the appellant/University will make suitable adjustments qua their attendance and if necessary, will hold extra classes for them.

2. There is no dispute to the fact that the respondents/petitioners had taken supplementary exams in respect of the papers in which they had failed and they had cleared the said exams after the cut-off date i.e. 31.08.2019. The contention of the appellant/University, both before the learned Single Judge as also before us is that the respondents/petitioners did not possess the basic qualification as on the cut-off date i.e. on 31.08.2019, since they had not passed their LL.B. course.

3. To put the facts in perspective, we may note that the results of the main LL.B. examination were declared on 31.07.2019. The entrance exam for the LL.M. course was held on 05.07.2019 and the results declared on 20.07.2019. The supplementary exams of LL.B., 6th Semester were no doubt held in the month of August, 2019, but the results were declared only in mid October, 2019, after the cut-off date.

4. Mr. Rupal, learned counsel for the appellant/University argued that the respondents/petitioners could not be admitted to the LL.M. course even provisionally as they lacked the basic eligibility qualification of an LL.B. Degree. On the directions of this court, Mr. Rupal had produced the background note of the Minutes of the Meeting of the Academic Council of the year 2010, leading to amendments to some clauses of Ordinance II, including Clause 3, which we have perused. He further pointed out that as is evident from the said background note, the University was examining the

issue of fixing a cut-off date to process the admissions right from the year 2010 onwards. He submits that in any event, this was in keeping with the directions issued by a Division Bench of this Court in University of Delhi v. Varun Kapoor, **2011 SCC OnLine Del 2077**, where it was also observed as follows :-

“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.”

5. According to Mr. Rupal, learned counsel for the appellant/University, subsequent to the decision of the Division Bench in Varun Kapoor (Supra), the University had modified its Rules to fix the last date for the admission process as 31st August of the year in which the admissions were taking place, beyond which it was not permissible to finalize the admission. Provisional admissions not finalized by the said date, were also to stand automatically annulled vide Ordinance II, Clause 3, last proviso. Clause 3 of Ordinance II provides as under :-

“3. Admissions shall be finalized by the Principals of Colleges and Deans of Faculties concerned, as the case may be, not later than such last date as may be prescribed by the Academic Council from time to time.

Provided that the Vice Chancellor may, at his discretion, allow admission to any course after the prescribed date as aforesaid, for very exceptional reasons, such as late declaration of results or such other reasons considered satisfactory by the Vice Chancellor up to the dates thought reasonable by him in each case.

Provided further that no admission will be made by a College

prior to the date to be fixed by the Academic Council each year.

Provided that all provisional admissions to the post graduate courses shall be finalized by the Standing Committees concerned not later than 31st August of the year in which admissions are sought. Provisional admissions not finalized by the aforesaid date shall automatically be annulled.”

(Emphasis added)

We may note that the said Clause of the Ordinance was not under challenge before the learned Single Judge.

6. Mr. Rupal, learned counsel for the appellant/University also submitted that the result of the supplementary exams could not be related back to the main examinations for purposes of admission to the LL.M. course since on the date of closure of the admissions on 31.08.2019, the respondents/petitioners were not eligible for admission having not acquired the basic qualifications of a degree in LL.B.. He placed reliance on the judgment of a co-ordinate Bench of this court in Ravi Yadav v. University of Delhi & Anr., **2017 SCC OnLine Del 12187**, to drive home the point that a person not having qualified in the qualifying examination within the prescribed period, was not entitled for admission to the LL.M. course and that the eligibility qualification of LL.B. was required to be obtained before the cut-off date fixed for admissions, in this case being 31.08.2019. Reliance was also placed on the judgment of the Supreme Court in Council of Homeopathic System of Medicine, Punjab and Others v. Suchintan and Ors., **1993 Supp(3) SCC 99** and a judgment of the Full Bench of the High Court of Punjab and Haryana in Rupinder Singh and Ors. v. The Punjab State

Board of Technical Education and Industrial Training, Chandigarh and Others, MANU/PH/1039/2001 to bolster his contention that declaration of the result of supplementary exams cannot relate back to the date of the annual examination. Hence, it was submitted that the learned Single Judge has erred in allowing the petitions of the respondents/petitioners and issuing directions to the appellant/University to take them in.

7. *Per contra*, Mr. Sahil Garg, learned counsel for the respondents/petitioners has relied heavily on the judgment of this Court in Varun Kapoor's case (supra) to submit that in that case, observing that as the Delhi University had not clarified that the eligibility to appear in the entrance test must be acquired at the main examination and not the supplementary examination, an opportunity was given to the University to rectify the position by stipulating in the Bulletin of Information that eligibility *de jure* as also *de facto* had to be obtained by the cut-off date and those placed in compartment, would be treated as ineligible.

8. It was argued by learned counsel that despite such an opportunity being afforded to the appellant/University, they had failed to correct the anomaly and the learned Single Judge had rightly granted the benefit thereof to the respondents/petitioners. It was also argued that the very fact that the University had insisted on a candidate mandatorily attending the counselling even if they did not possess the basic/professional certificate, would show that their right to seek admission in subsequent lists was protected, as they were still treated eligible for such consideration for subsequent admission. Reliance was also placed on the judgment of the Division Bench of the High Court of Gujarat in Patel Kruti Dilipkumar and Ors. v. State of Gujarat and Ors., 2014 SCC OnLine Guj 2971 to contend that the doctrine of relation

back applied to supplementary exams in the sense that once the results of the supplementary exams were declared, they related back to the date of declaration of the results of the regular examinations.

9. We have heard learned counsel at length, perused the relevant documents and the pleadings and given our thoughtful consideration to the cited judgments. To our mind, the judgments relied upon by learned counsel for the respondents/petitioners cannot come to their aid, as they are distinguishable on facts.

10. Since much emphasis has been laid by learned counsel for the respondents/petitioners on the observations of the High Court in Varun Kapoor's case (supra), it would be useful to refer to the facts of the said case in a little detail. In that case, Varun Kapoor was pursuing his graduate degree from a college affiliated to the Delhi University. He had cleared the entrance test and since the final result pertaining to the graduate degree course had not been declared, provisional admission was given to him. Unfortunately, Varun Kapoor failed in one subject and was permitted to take the supplementary exam, which he cleared successfully. However, by that time, the date by which he had to submit the requisite documents pertaining to his eligibility, namely, the final/provisional graduate degree issued by the University, alongwith the mark-sheet, evidencing that he had acquired the graduate degree with at least 50% marks, had lapsed. The University permitted him to continue attending classes and raised the issue somewhere in the month of December, by when the First Semester End Term examination was to be conducted. The University not only denied him the right to sit in the examination, but also threatened to cancel his admission, on which point of time, a writ petition was filed by the student praying that a

declaration be granted that he was entitled to confirmation of his provisional admission and permitted to sit for the ensuing Semester End Term examination, as per the Rules. The learned Single Judge had allowed the writ petition and the University took the matter in appeal. In this background, while dismissing the appeal of the University, a co-ordinate Bench of this Court had observed as below: -

“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.”

11. The first thing to be noticed here is that the co-ordinate Bench had

also found merit in the plea of the University that if the cut-off date is prescribed by which eligibility had to be secured, subsequent procurement of such an eligibility would be of no consequence. Further, the court saw no reason as to why the University should not scrutinize the cases of provisional admissions by the cut-off date and bring an end to the said issue at the earliest. In the present case, the appellant/University has chosen to bring the entire admission process to an end by the cut-off date prescribed i.e. 31.08.2019. Thus, the University appears to have followed the directions of this court in Varun Kapoor's case (supra). Moreover, the facts in that case were different from the present one. In the present case, provisional admission has also been declined to the respondents and the appellant/University had not approved of their admission on the admission portal for payment of fees and the status of their admission on the University's website showed "*cancelled due to non-payment of fees*". But in Varun Kapoor's case (supra), not only was provisional admission given to the petitioner, he was also permitted to attend the classes. It was at the belated stage when he was to appear for the Semester End Term Examination that the University chose to threaten cancellation. This judgment can therefore, not enure to the benefit of the respondents herein.

12. The observations in Patel Kruti Dilipkumar's case (supra) were made in the light of the fact that in the said case, there was no specific rule which debarred a student who had not cleared the regular examination, but had cleared the papers in the supplementary examinations from seeking admission in the post-graduate course. In the present case, Ordinance II and its proviso govern the admissions and the Schedule.

13. In Suraj Pratap Singh v. University of Delhi and Anr., **2016 SCC**

Online Del 5480, it was held that mere non-possession of the degree/provisional certificate at the time of counselling would not be of any consequence since Clause-II of the Notification therein required that all candidates including those whose results of the qualifying degree examination had not been declared, must attend the counselling, as per the Schedule. The candidate therein was unable to produce the qualifying degree (B.A.) from the concerned University since the result had not been declared and she had been provisionally admitted to the LL.B. course. This was not a case relating to supplementary exams.

14. Supplementary exams are conducted to enable a student to complete the course papers of each semester so that at the end of the academic session, the student can be declared to have passed the entire LL.B. course within the prescribed time period. Where eligibility is acquired by a candidate after the admission process has come to an end by passing supplementary exams, one cannot draw an inference that the candidate would be deemed to have been eligible for admission in that course as on the cut-off date. In Council of Homeopathic System of Medicine's case (supra), the Supreme Court has observed that: -

*“33. Supposing he passes in that subject or subjects in the supplementary examination he is declared to have passed at the examination as a whole. This should obviously be so; because once he completes all the subjects, he has to necessarily be declared to have passed. Merely on this language, “declared to have passed at the examination as a whole”, we are unable to understand as to how the “doctrine of relation back” could ever be invoked. The invocation of such a doctrine leads to strange results. **When a candidate completes the subjects only in the supplementary***

examination, then alone, he passes the examination. It is that pass which is declared. If the “doctrine of relation back” is applied, it would have the effect of deeming to have passed in the annual examination, held at the end of 12 months, which on the face of it is untrue.”

(Emphasis added)

15. The Full Bench of the High Court of Punjab and Haryana in Rupinder Singh’s case (supra) held thus: -

“18. In the light of the above discussion, we are of the considered opinion that a candidate can be declared to have passed an examination only with effect from the date on which result of the examination is declared. The declaration of the result cannot relate back to the date of the examination unless otherwise specifically provided by any Act or rules as in service Jurisprudence. Nor can it legally be taken that by passing supplementary examination the result will relate back to the date of passing of the annual examination. We are firmly of the view that publication of the result of the examination cannot have any retrospective operation by projecting it backward to the date of the examination or to the date of the main examination. If such a course is adopted, we are clear in our mind that it will become impossible to decide the qualification of a particular candidate with reference to any date like last date of filing the application for any post or for admission to any course. While disposing of the review petition No. 182/96, the Bench went a step further and said that the benefit of the judgment will accrue to petitioners and to all those who had appeared in supplementary examination either in re-appear or in compartment and who have been given admission by the College-Management and whose results were declared after the cut off date. These observations made by the Bench are not

correct statements of the law. We do not approve the same.”
(Emphasis added)

16. In Ravi Yadav’s case (supra), the petitioner therein was seeking directions to the University of Delhi to accept the fee from him for granting him provisional admission in LL.M. 1st year for the academic year 2017-18, with a further direction to extend the time for submitting documents as required and his request had been rejected by the University. In that case also, the entrance test for LL.M. was held on 02.07.2017. It was noted that for admission into LL.M., the appellant had to qualify the LL.B. course. On 09.08.2017, the results for the 6th Semester as well as 4th Semester, in which the petitioner therein had to clear three papers, were declared and unfortunately, he did not clear one paper in the 4th Semester. Thus, he did not qualify in the First Admission List published on 11.08.2017. On 26.08.2017, his name was included in the Second Cut-off List for admission in the OBC category and he attended the counselling session on 28.08.2017 and was granted 10 days time to deposit the documents, namely, the OBC certificate and the basic degree certificate. The student appeared in the supplementary exam of the 4th Semester on 29.08.2017, the result of the said exam was declared on 17.10.2017 and he was declared as having passed the paper of the 4th Semester. In the aforesaid background, the court had observed as follows: -

“11. Insofar as the contention of the appellant with regard to the provisional admission is concerned, it is noticed from the application form produced by the learned counsel for the respondent University that there is no endorsement on the same for grant of provisional admission to the appellant. On the contrary, the application form notices the deficient

*documents, inter alia, the result of the qualifying examination and the OBC certificate. Admittedly, the last date for submission of the requisite documents was in terms of the counselling held on 28.08.2017, i.e. ten days. **The appellant had not qualified the qualifying examination as on the date of the counselling. The supplementary examination having been held on 29.08.2017 and the result thereof declared on 17.10.2017, the appellant could not have submitted the requisite qualifying result within the stipulated ten days of 28.08.2017.** Further, with regard to the contention of the appellant of not having submitted even the OBC certificate, it is noticed that neither has the appellant averred that the OBC certificate is available nor has the same been placed on record. Even otherwise, it was for the appellant to have submitted the same to the concerned authorities within the time frame prescribed. **Even if it were assumed that the appellant does satisfy the requirements of the OBC category and does possess the document to be submitted to the University, but has not submitted the same, it would not help the case of the appellant as the appellant has not even qualified the qualifying examination within the prescribed time.***

(Emphasis added)

17. It appears that the attention of the learned Single Judge had not been drawn to the aforesaid decision of a co-ordinate Bench of this court rendered on 08.12.2017.

18. When the respondents/petitioners herein did not possess the basic eligibility qualification of having passed the LL.B. exam as on 31.08.2019, merely because they had passed the LL.M. entrance exam, cannot be a ground for them to claim any vested right in seeking admission to the LL.M.

course. Eligibility has to be seen as on the date when the admission is offered. Clearly, on that date, neither of the two respondents/petitioners possessed the LL.B. degree. Since the supplementary exams were held only on 19.08.2019, under no circumstance could the respondents/petitioners have produced a provisional LL.B. degree on or before 31.08.2019, the cut-off date fixed for finalizing the admissions.

19. The argument of the learned counsel for the respondents/petitioners that the Schedule for conducting the supplementary exams is also drawn up by the appellant/University and that they themselves fix the cut-off date for seeking admission, with the students and candidates having no say in the matter and these schedules lead to a hardship to the students, will not lead us anywhere. The appellant/University is well within its powers to draw up the Examination Schedule and Admission Schedule and in order to establish a fair procedure for admission, prescribe the eligibility criteria and the cut-off dates for admission, as necessary adjuncts. Strict adherence is therefore a matter of necessity.

20. In the above facts and circumstances, we are not persuaded by the conclusion drawn by the learned Single Judge. The appeals are therefore allowed and the impugned judgment is set aside. The appeals alongwith the applications are disposed of with no orders as to costs.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

DECEMBER 03, 2019/s