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

Judgement reserved on 21.11.2019

Judgement pronounced on 22.11.2019

+ **W.P.(C) 11177/2019 & C.M. No.46002/2019**

HIMANSHU & ORS

..... Petitioners

Through Mr. Naushad Alam, and Mr. Jitendra
Bharti, Advocates.

versus

**UNIVERSITY OF DELHI, FACULTY OF LAW THROUGH
REGISTRAR**

..... Respondent

Through Mr. Mohinder J.S. Rupal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J:

Backdrop: -

1. Before me are three petitioners who seek admission to the LL.B. programme offered by the University of Delhi (hereafter referred to as “University”).

1.1. The petitioners were denied admission by the University for the reason that the documents submitted by them were either discrepant or incomplete.

1.2. It is worth noting that the University did not pass any specific written order in that behalf. The reasons for denying admission, it appears, were

only communicated to the petitioners orally by the concerned authorities in the University.

1.3. Therefore, one is presented with a situation, which is, that while the petitioners have adverted to the purported deficiencies and/or the inchoateness in the documents submitted by them in the petition, the University has accepted the same, not explicitly, but implicitly by not entering a denial.

1.4. I will be adverting to these deficiencies as I go along with my narration. Suffice it to say, at this juncture, that even though the names of the petitioners were shown in the 7th admission list which was published on 31.08.2019 i.e. the cut-off date stipulated in the Information Bulletin, the deficiencies were pointed out by the concerned authorities in the University, to each of the petitioners, only thereafter.

2. The deficiencies, which, even according to the University, obtained in the documents submitted by each of the petitioners, are as follows.

2.1. Insofar as petitioner No. 1 is concerned, the Scheduled Caste (SC) certificate obtained by him carried only his first name i.e. Himanshu without the surname, Prakash being adverted to.

2.2. The deficiency pointed out *qua* petitioner No. 2 concerned the absence of the graduation result.

2.3. Likewise, petitioner No. 3's graduation result, which, had to be submitted by School of Open Learning, (in short 'SOL') was not available.

3. There is no dispute that petitioner No. 1 furnished an affidavit, attested by the Executive Magistrate, which alluded to the fact that though the SC certificate submitted by him referred to his first name, other documents such as his school certificate and graduation certificate referred

to the surname as well. Thus, in other words, the affidavit sought to establish the fact that the SC certificate issued in favour of petitioner No. 1 was valid.

3.1. Similarly, *qua* petitioner No. 2, what is not in dispute is that on the record of the University, a photocopy of the provisional certificate dated 06.09.2019, issued by T.K. Bhagalpur University is available. T.K. Bhagalpur University is the University from which petitioner No. 2 has completed her graduation.

3.2. Likewise, there is no dispute that the “confidential result”, concerning petitioner No. 3 (which is dated 05.09.2019), that was declared by SOL, was available on record of the University.

Submissions of Counsel: -

4. Given this backdrop, arguments advanced by both parties in the matter have been heard by me.

5. Mr. Naushad Alam, Advocate, who, appeared on behalf of the petitioners, contended that discrepancies, if any, which were pointed out *qua* the petitioners stood removed by 05-06.09.2019 and, therefore, there was no good reason to deny admission to them in the LL.B. programme.

5.1. In support of his submission that the counselling date (contrary to what is portrayed by the University) was not 31.08.2019 but 05-06.09.2019, reliance was placed by him on the notice dated 03.09.2019 issued by the University.

5.2. Mr. Alam submitted that because the 7th admission list was declared in the evening of 31.08.2019 for various courses including the LL.B. programme, it was not possible for all candidates including the petitioners to seek admission on that date.

5.3. The argument was that as a result of hue and cry raised by candidates, the University took out the notice dated 03.09.2019 and accordingly, carried out the counselling on 05-06.09.2019.

5.4. Mr. Alam went on to contend, based on the notice dated 03.09.2019, that all those candidates whose names appeared in the final admission list published on 31.08.2019 but were unable to report and/or pay their fee by that date were allowed to seek admission on 05-06.09.2019.

5.5. Thus, it was sought to be argued that 05-06.09.2019, if not *de jure*, were certainly the *de facto* counselling dates fixed for candidates who fell within the scope and ambit of notice dated 03.09.2019. This argument was sought to be buttressed by drawing my attention to the last three lines of notice dated 03.09.2019 which adverted to the fact that the link for fee payment was to be activated only after the completion of Delhi University Students Union (in short 'DUSU') Elections which were scheduled for 13.09.2019.

6. Mr. Rupal, on the other hand, resisted the writ petition on the following grounds.

- i. First, that the admission process closed on 31.08.2019 and therefore no admission could be granted thereafter even if seats are found to be available.
- ii. Second, the LL.B. programme being a professional course, the Bar Council of India (BCI) rules concerning attendance would have to be adhered to. In other words, the petitioners were required to have attended a minimum of 70% of classes held in each semester and having failed to secure admission they would not be able to make up their attendance in the ordinary course.

- iii. Third, the petitioners are guilty of laches as the writ petition was filed only on 18.10.2019.
- iv. Lastly, on the date of counselling, there were deficiencies found in the documents submitted by the petitioners, and therefore, no relief can be granted to them at the point in time.

Analysis and Reasons: -

7. Given this backdrop, to my mind, the issues which arise for consideration in this case are as follows.

- i. Whether 31.08.2019 was in fact the counselling date as portrayed by the University?
- ii. If the answer to issue No. (i) is in the negative, was 05-06.09.2019 the *de facto* counselling date as provided in the notice dated 03.09.2019?
- iii. Were the petitioners able to cure the deficiencies pointed out by the University? If so, by which date?
- iv. Will the BCI rules concerning attendance in this case come in the way of the petitioners?

Issue No. (i) and Issue No. (ii): -

8. As noted above, the University has not raised a cavil with regard to the fact that the names of the petitioners were published in the 7th admission list. This list, as noticed above, was published on 31.08.2019.

8.1. The 7th admission list, however, had, as it appears, published the names of the candidates based on the categories in which they fell.

8.2. Accordingly, petitioner No. 1's name was shown at serial No. 4 along with other candidates falling in the SC category. The petitioner No. 1's combined rank in the entrance exam was shown as 19.

8.3. Insofar as petitioner No.2 was concerned, her name was shown at serial No.2 along with other candidates who fell in the ST category. Her combined rank was shown as 231.

8.4. Likewise, petitioner No. 3 had her name clubbed with candidates who fell in the EWS category. Her name was, however, shown at serial No. 1 with a combined rank of 125.

9. Given the fact that the 7th admission list was published on 31.08.2019 (which is the cut-off date provided in the Information Bulletin), the safe presumption is (as no light has been shed by the University on this aspect) that because there was perhaps, a hue and cry raised by the candidates generally that admissions could not be obtained at short notice, it led to the issuance of notice dated 03.09.2019. This specific assertion has been made by the petitioners in paragraph 4 of the writ petition. Furthermore, in this very paragraph of the writ petition, an averment has been made that the counselling dates fixed were 05-06.09.2019.

9.1. None of these assertions (which have been made in paragraph 4 of the writ petition) have been denied in the counter-affidavit filed on behalf of the University.

9.2. In context of what is noted above, it would be important to extract the notice dated 03.09.2019. This is more so as the entire case of the petitioners is pivoted on what one construes as the true import and purport of the said notice.

“Notice for Postgraduate Admissions 2019-20.

In order to redress the Grievances received by the Admission Office, it is hereby resolved to process the Admissions on 05th and 06th September, 2019 in the respective Faculties, Departments and Colleges for those Postgraduate applicants whose names appeared

in the final admission list declared on 31st August, 2019 and were unable to report and/or pay their fees on 31st August, 2019.

However, fee payment link for all the above cases shall only be activated after the completion of DUSU election scheduled on 13th September, 2019.

**OSD Admissions
Admission Office,
University of Delhi,
Delhi-110007.**

03rd September, 2019”

(Emphasis is mine)

9.3. A careful perusal of the notice would show that it was issued to redress the grievances articulated with regard to admission of students in postgraduate courses on account of last-minute publication of the 7th admission list.

9.4. Though the expression “7th admission list” does not find mention in the aforesaid notice, there is no dispute that on 31.08.2019, the only admission list which was issued was the 7th admission list.

9.5. Because the 7th admission list was published on the cut-off date, prescribed in the Information Bulletin, the University, it appears, deemed it fit to defer the admission process to 05-06.09.2019 across all faculties, departments, and colleges running under its aegis subject to the candidates fulfilling the following attributes.

- i. Firstly, they had to be candidates whose names appeared in the final admission list published on 31.08.2019.
- ii. Secondly, they were those candidates who were unable to report and/or pay their fees on 31.08.2019.

9.6. However, based on the averments made in the counter-affidavit, Mr. Rupal takes the stand, on behalf of the University, that the last date for

admission was 31.08.2019 and that only the date for deposit of the fees was extended to 05-06.09.2019.

9.7. Curiously, while Mr. Rupal emphasizes the fact that the petitioners were not able to produce the requisite documents at the time of counselling, there is no averment in the counter-affidavit filed on behalf of the University as to what was the date of counselling and more specifically, who carried out the counselling. In this context, it would be important to advert to the assertions made in paragraph 12 of the counter-affidavit.

“12. The Faculty of Law could not extend further time to produce documents to the petitioners as the last date of admission was 31.08.2019 and only fees was allowed to be deposited on 05.09.2019 to those candidates who could not deposit the fees on 31.08.2019. The Petitioner herein admittedly did not have all the requisite documents which were necessary to be produced at the time of Counselling. Hence their names were not considered for admission. The Law is well settled that the candidate is required to produce all the requisite documents on the date of counselling otherwise such candidates cannot be considered for admission and their candidature stand rejected forthwith.”

9.8. As is obvious upon perusal of the counter-affidavit, the University has skirted, completely, the assertion made by the petitioners based on notice dated 03.09.2019. A plain reading of notice dated 03.09.2019 would show that it deferred the admission process to 05-06.09.2019 for not only those candidates who did not report on 31.08.2019 but also those who were unable to pay their fee by the said date.

9.9. The aforesaid notice, in no uncertain words, mentions that the payment link for candidates who fell within its ambit would be activated only after the completion of DUSU election which was slated, at that point in time, on 13.09.2019. Thus, the argument advanced on behalf of the

University by Mr. Rupal that 31.08.2019 was the date when the admission process closed and therefore no admissions could be granted thereafter even if seats were vacant is completely untenable.

10. The admission process, undoubtedly, and by the same yardstick, the counselling date, was shifted by the University to 05-06.09.2019 *via* notice dated 03.09.2019.

10.1. Thus, to my mind, what emerges upon perusal of the record is that the counselling date was not 31.08.2019 as portrayed by the University but was 05-06.09.2019 as contended by the petitioners.

10.2. Even otherwise, if one were to accept that the *de jure* counselling date was 31.08.2019, the *de facto* counselling date (by virtue of the notice dated 03.09.2019), was 05-06.09.2019. Issue No. (i) and Issue No. (ii) are answered accordingly.

Issue No. (iii): -

11. The additional affidavit dated 21.11.2019 filed on behalf of the University clearly establishes that the discrepancies pointed out *vis-à-vis* the petitioners stood cured on 05-06.09.2019.

11.1. I must indicate herein that insofar as petitioner No. 1 is concerned, the University has picked-on the endorsement made by the Executive Magistrate, which, while advertng to the fact that the affidavit was sworn before him, goes on to say that no responsibility is taken by him concerning the contents of the affidavit.

11.2. In my opinion, nothing material turns on the wording of the endorsement. The fact of the matter is that except for the SC certificate in which petitioner No. 1's name is shown as "Himanshu", in the school

certificate and the graduation certificate, his name is shown as “Himanshu Prakash”.

11.3. The affidavit filed by petitioner No.1 only swears to the fact that Himanshu and Himanshu Prakash are the same person.

11.4. Since the University has placed nothing on record which would show that the assertion made by petitioner No. 1 by way of an affidavit sworn before the Executive Magistrate is erroneous, the stand of petitioner No.1 that he is the very person who has been issued an SC certificate would have to be accepted.

11.5. Since the sworn affidavit was, admittedly, filed with the University on 05.09.2019, deficiency, if any, *qua* the documents filed by petitioner No. 1 stood cured.

11.6. Likewise, insofar as petitioner No.2 is concerned, a provisional certificate dated 06.09.2019 issued by T.K. Bhagalpur University is on record. It is not the University’s case that the provisional certificate does not demonstrate that petitioner No. 2 is a graduate. Since this document was made available on 06.09.2019, one would have to say that even in petitioner No. 2’s case the defect was cured.

11.7. Insofar as petitioner No.3 is concerned, admittedly, SOL had submitted her graduation result to the University on 05.09.2019. Therefore, even in her case the defect stood cured.

11.8. Given this position, issue No. (iii) is also answered in favour of the petitioners.

Issue No. (iv): -

12. Insofar as the recourse is taken by the University to BCI rules pertaining to attendance to resist the petition, in my view, while the said

rules have to be adhered to, they cannot be used to deny petitioners admission for the reason that it was the University which prevented the petitioners from gaining admission on the ground that deficiencies in their documents were cured after 31.08.2019 even while it had on its own deferred the date for processing the admissions i.e. the counselling date to 05-06.09.2019.

12.1. Since, in my view, the petitioners were not at fault, it would be incumbent upon the University to arrange for the necessary remedial classes for the benefit of the petitioners so that they can make up the shortage in attendance.

13. The record shows that in this particular case, by an order dated 22.10.2019, petitioners were given leave to attend classes subject to the final outcome in the writ petition. The University by the very same order was directed to maintain a separate record of the attendance concerning the petitioners.

13.1. Therefore, I would presume that the petitioners, during the pendency of the petition, would have been able to attend some, if not all, classes.

13.2. Before I conclude, I must point out that though Mr. Rupal in the course of his arguments has admitted that seats are available in the SC and ST category, it was his submission that there was no seat available in the EWS category. Mr. Rupal was, however, not able to inform me as to what was the vacancy position in other categories.

The cut-off date argument: -

14. The argument advanced on behalf of the University that no admission can be granted beyond the cut-off date i.e. 31.08.2019 is untenable, in this case, for two reasons.

- i. Firstly, by issuing the notice dated 03.09.2019, the University itself deferred the date of processing the admissions to 05-06.09.2019. This is an aspect which I have already dealt with in some detail hereinabove and therefore I need not elaborate on the same once again.
- ii. Secondly, while the cut-off date ordinarily has to be adhered to scrupulously, in the circumstances where no-fault is attributable to the candidates, this rigour has been relaxed by courts. [See: *Asha vs. Pt. B.D. Sharma University of Health Sciences and Others*, (2012) 7 SCC 389; and *Dr. Vinayak Varma vs. Medical Counselling Committee & Ors.*, 2018 SCC OnLine SC 3113]

Conclusion: -

15. Given the aforesaid position, and for the foregoing reasons, I am inclined to allow the writ petition. Resultantly, the University will grant admission to petitioner No. 1 and 2 in the LL.B. programme in the SC and ST category respectively.

15.1. Insofar as petitioner No. 3 is concerned, if a seat is available in the general category, the same will be allocated to her in that category. [Refer: *Miss Asha Kumari vs. The Rajendra Agricultural University & Ors.*, AIR 1997 Pat 102 (See paragraph 9-10 at page No. 106); and *Hari Singh Nalwa Trust (Regd.) and Ors. vs. State of Haryana and Ors.*, 2014 SCC OnLine P&H 20880 (See paragraph 5)].

16. Since Mr. Rupal had submitted the counter-affidavit dated 21.11.2019 in Court, the Registry for the purposes for good order and record will scan and upload the same.

17. The writ petition and pending application is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

NOVEMBER 22, 2019

