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

+ **W.P.(C) 6814/2019 & CM APPLs. 28488/2019 & 37658/2019**

Date of decision: 17th September 2019

KAVASH KHANNA

..... Petitioner

Through: Mr. Manish Bhardwaj, Adv.

versus

FACULTY OF MANAGEMENT STUDIES & ORS.....Respondents

Through: Mr. Mohinder J.S. Rupal with
Mr. Hardik Rupal and Mr. Prang
Newmei, Advocates for University
of Delhi.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

Preface

1. At the heart of the matter is the dispute obtaining between the parties *qua* the issue as to whether the petitioner fulfils the eligibility criteria stipulated for gaining admission to the MBA Programme.

1.1 The eligibility criteria for the MBA Programme which is contained in the Information Bulletin, *qua* which there is no dispute, provides for the following:

“Eligibility Criteria for MBA Programme,

Candidates applying for admission to the MBA programme must have pursued at least a Bachelor's Degree programme after twelve years of formal schooling with at least 50% marks at graduation level (SC/ST: Passing Marks; OBC/PWD/CW; 45% as per the University Rules) or equivalent CGPA. Candidates appearing for the final year examination of Bachelor's Degree may also apply!

Note: Candidates appearing in the final year examination of Bachelor's Degree are eligible to apply for admission irrespective of their percentage of scores obtained till the time of application, provided that they expect to fulfil the eligibility

criteria when their results are declared and which must be submitted to the FMS office at the time of admission to the programme.”

2. The respondents take the position that the petitioner does not fulfil the eligibility criteria as he did not obtain his graduation result by 21.05.2019.

2.1 Pertinently, this date is not referred to in the Information Bulletin published by the respondents.

2.2 The petitioner claims that he has obtained a Bachelor's degree in B.A. Economics (Hons.) from the Hindu College, University of Delhi after undertaking 12 years of formal schooling with 93 percent marks in Grade XII. The petitioner also asserts that he passed his class XII exam with 93 percent marks and secured in his graduation a CGPA of 7.31 which rounds off to 69.5 percent.

3. Therefore, if one were to iterate the stand taken by the parties, the only limb of the eligibility criteria provided in the Information Bulletin *vis-à-vis* which a dispute arises before me is : whether there was a requirement to furnish the results obtained at the graduation level by the petitioner on or before 21.05.2019.

3.1 Pertinently, the petitioner's results in B.A. Economics (Hons.) were declared on 28.06.2019 while his candidature for the full-time MBA Programme was rejected on 03.06.2019.

Background Facts

4. Given this preface and in order to adjudicate upon the aforementioned issue, it would be relevant to notice the following facts:-

4.1 The petitioner is an Australian citizen and an Overseas Citizen of India (OCI Card holder). The petitioner pursued his undergraduate studies, as adverted to above, in B.A. Economics (Hons.) from the Hindu College, University of Delhi. The petitioner being desirous of pursuing a course in MBA, on 07.03.2019, submitted an application for being admitted to the full-

time MBA Programme conducted by the Faculty of Management Studies, University of Delhi, for the academic session 2019-2020.

4.2 At the point in time when the application was preferred by the petitioner, he was awaiting the results of VIth and final semester of his undergraduate course.

4.3 The respondent No. 2 via an email dated 03.06.2019 conveyed to the petitioner that his application for admission to the academic session 2019-2020 had not been recommended.

4.4 It is relevant to note that the petitioner had applied for the full-time MBA Programme under the foreign students' quota. It appears that the respondents have provided for two (2) seats each *vis-a-vis* candidates who hail from the following five continents i.e. Asia, The Americas, Europe, Australia and New Zealand and Africa. The Australia and New Zealand continent according to the respondents is compendiously referred to as the "Oceania continent".

5. The petitioner being aggrieved approached this court by way of the instant writ petition. The writ petition came up for hearing on 17.06.2019. On that date the court issued notice in the writ petition and proceeded to direct the respondents to reserve one seat in the foreign students' quota subject to further orders of the court. The interim order has continued to obtain up until now.

6. The respondents have filed a counter affidavit to resist the writ petition.

6.1 A perusal of the affidavit would show that the following facts are not in dispute either on account of explicit admission or due to absence of refutation.

(i) Under the full-time MBA Programme, ten (10) seats are reserved for foreign nationals.

(ii) The last date for preferring an application was 09.03.2019.

- (iii) The petitioner submitted his application on 07.03.2019.
- (iv) The respondent No. 2 recommended rejection of the petitioner's application for seeking admission to the full-time MBA Programme vide email dated 03.06.2019.

Submissions of the Counsel

7. In this backdrop, in support of the petitioners' case, arguments were advanced by Mr. Manish Bhardwaj, Advocate, while on behalf of the respondents, submissions were made by Mr. Mohinder JS Rupal, Advocate.

8. On behalf of the petitioner, the argument was brief and precise. It was submitted that the petitioner fulfilled the eligibility criteria as stipulated in the Information Bulletin published by University of Delhi for the academic session 2019-2020.

8.1 It was contended that the petitioner had passed the undergraduate course in B.A. Economics (Hons.) with more than 50% marks after 12 years of formal schooling.

8.2 The assertion made in this behalf was that in the Grade XII the petitioner had obtained 93 percent marks while at the undergraduate level he had obtained a CGPA of 7.31 which in percentage terms would amount to 69.5 percent.

8.3 Given this factual situation, according to the learned counsel, the respondents could not have pre-empted the petitioner from submitting his graduation mark-sheet which was to be handed over at the time of admission to the full-time MBA Programme by issuing the communication dated 03.06.2019.

8.4 It was emphasized that the Information Bulletin did not stipulate that the petitioner and persons similarly placed were required to submit their graduation results on or before 21.05.2019 as contended by the respondents.

9. On the other hand on behalf of the respondents, Mr. Rupal contended to the contrary. It was Mr. Rupal's submission that the online registration for academic session 2019-2020 commenced on 08.10.2018 and closed on 28.11.2018. Since foreign students with Indian and foreign degrees had to fulfil other formalities, as a special case, the last date for filing applications for admission by foreign students was fixed as 09.03.2019.

9.1 Furthermore, the cut-off date for closure of admission for the full-time MBA Programme *qua* academic session 2019-2020 was fixed as 21.05.2019.

9.2 In other words, according to the learned counsel, the admission to the full-time MBA Programme for the academic session 2019-2020 was tailored to primarily cater to those candidates who had obtained their graduation degree in 2018.

9.3 It was submitted that this requirement was however relaxed for those candidates who had obtained a graduation degree in 2019 prior to the cut-off date. Therefore, the candidates who had not obtained their graduation results before the cut-off date i.e. 21.05.2019 were not considered for grant of admission to the full-time MBA Programme.

9.4 Besides this, it was submitted that *qua* the "Oceania continent", a candidate from Fiji Islands had been considered for grant of admission to the full-time MBA Programme.

9.5 Importantly, on being queried, Mr. Rupal did indicate that one (1) seat as directed by this court vide order dated 17.06.2019 had been reserved for the petitioner.

9.6 Thus, in sum, Mr. Rupal's submission was that since the petitioner had obtained his graduation results after 21.05.2019 he was not eligible for being considered for admission to the full-time MBA Programme under the foreign students' quota available for the "Oceania continent".

9.6 In support of his submission that the cut-off date was sacrosanct,

reliance was placed on a judgement rendered by this court in W.P. (C) 6861/2007, titled *Aakansha vs. Guru Gobind Indraprastha University and Ors.*

Analysis and Reasons

10. I have heard learned counsel for the parties and perused the record. As indicated in the earlier part of my discussion certain facts are not in dispute.

(i) First, that the petitioner had applied under the foreign students' quota on 07.03.2019 well before the last date of submission for application to the full-time MBA Programme i.e. 09.03.2019.

(ii) Second, the petitioner was sent a communication with regard to his application not being recommended by respondent No. 2 on 03.06.2019.

(iii) Third, the petitioner obtained his results *qua* his undergraduate course on 28.06.2019.

10.1. As alluded to hereinabove, the question which arises for consideration is: whether the respondents could deny the petitioners' admission by fixing a cut-off date which did not find mention in the Information Bulletin?

10.2 As per the eligibility criteria which was stipulated in the Information Bulletin and has been extracted hereinabove by me, the petitioner was required to submit his results "*at the time of admission to the programme*".

10.3 The eligibility criteria as stipulated in the Information Bulletin even according to the respondents permitted candidates who had appeared in their final year examination at the undergraduate level to apply for admission to the full-time MBA Programme based on their predicated scores with the caveat that their final result would meet the minimum marks condition provided therein.

10.4 The minimum marks which the candidate was required to obtain at the graduation level was 50 percent. Therefore, while applications could be made based on predicated scores, admission was to be made based on the actual results obtained by the candidate. The petitioner was, however,

pre-empted from placing before the respondents his final result obtained in the graduation on account of the missive contained in communication dated 03.06.2019.

10.5 This communication did not advert to the fact that the petitioner's application was not recommended for the reason that he had failed to submit his graduation marks before the cut-off date i.e. 21.05.2019. Thus, clearly the position taken in the communication dated 03.06.2019 is sought to be defended by incorporating in the affidavit filed on behalf of the respondents the averment that the cut-off date for submission of graduation results was 21.05.2019.

10.6 Apart from the fact that the respondents, in my opinion, in law, could not supply the reasons for the first time via the counter affidavit filed on their behalf to defend the position which was not articulated in the impugned communication, the date indicated in the counter affidavit rails against the eligibility criteria stipulated in the Information Bulletin.

10.7 As pointed out hereinabove the eligibility criteria required the candidate, in this case the petitioner, to submit his graduation results at the time of admission to the full-time MBA Programme.

10.8 Thus, the judgement relied upon by the respondents is, clearly, distinguishable as it does not deal with the factual scenario obtaining in the instant case, which is, propping up of a cut-off date which does not find mention in the Information Bulletin published by the respondents.

11. Therefore, for the foregoing reasons, I am of the view that the communication dated 03.06.2019 would have to be quashed as prayed and the petitioners' case would have to be reconsidered for admission to the full-time MBA Programme *qua* the academic session 2019-2020 having regard to the eligibility criteria incorporated in the Information Bulletin and the findings returned by me with regard to the cut-off date stipulated by the respondents.

11. 1 It is ordered accordingly.

11.2 The respondents will carry out this exercise within one week of the receipt of a copy of the order.

12. The writ petition is disposed of in the aforesaid terms. Accordingly, the pending applications shall stand closed.

RAJIV SHAKDHER, J

SEPTEMBER 17, 2019