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

Reserved on: 14th January, 2019

Pronounced on: 1st May, 2019

+ W.P. (C) 11940/2018

NIKHIL AGRAWAL

..... Petitioner

Through: Mr. Anjuman Tripathy, Adv.

versus

THE UNIVERSITY OF DELHI AND ORS..... Respondents

Through: Mr. Mohinder J.S. Rupal and
Ms. Slomita Rai, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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J U D G M E N T

1. Registration, for admissions to Post Graduate (PG) programmes, being conducted by the University of Delhi (hereinafter referred to as “the University”) for the 2018-2019 academic session, was announced, by it, *vide* Press Release dated 10th May, 2018. The registration process was to commence on 18th May, 2018. In the M.A. (Political Science) Programme, with which the present writ petition is concerned, a total intake of 502 students was declared, out of which 251 seats were to be filled on the basis of an entrance test and 251 seats as per merit in the Undergraduate Programmes. Of the 251 seats to be filled on the basis of entrance test, 127 seats were allotted to the General Category. The petitioner seeks admission against one of these 127 seats.

2. The Admission Bulletin, issued by the University for its PG courses contained the following “Disclaimer”:

“The University reserves the right to suitably modify, update or delete any part of the Bulletin without any prior notice.”

3. Further, Clause 1.8 i) iii. of the Admission Bulletin, which may justifiably be regarded as the pivot on which the petitioner’s case hinges, read thus:

“Those Applicants, who do not report to the “Reporting Centre” within the scheduled time limit of the given “Admission list”, irrespective of the fact whether all other criteria of admission are fulfilled, shall NOT be considered for Admission in any of the subsequent lists.”

4. The petitioner secured 66.75% marks in his B.A. (Pass) Course, for which he had been registered with the Kirori Mal College. It is not in dispute that the petitioner was, thereby, eligible to apply for participating in the entrance test for admission to the PG Courses conducted by the University, including the M.A. (Political Science) course.

5. The petitioner applied for the said course on 21st May, 2018. *Vide* notice dated 7th June, 2018; the University announced that the online entrance examinations, for admission to the said course, would be conducted on 17th June, 2018, between 12 noon and 2 PM. The examination was held, as announced. The petitioner appeared and, in the result of the entrance examination, his name figured at S. No. 386.

6. Subsequently, the University notified the “Revised Admission Schedule for PG Admissions (2018-19)”, whereunder the First Admission List was to be notified on 25th July, 2018, for which verification of documents and approval of admission was to take place between 25th and 27th July, 2018, the Second Admission List was to be notified on 31st July, 2018, for which verification of documents and approval of admission was to take place between 31st July and 2nd August, 2018 and the Third Admission List (if required) was to be notified on 6th August, 2018, which verification of documents and approval of admission was to take place between 6th and 8th August, 2018.

7. These schedules were scrupulously followed. Three Admission Lists were announced, and document verification and approval of admissions, undertaken, thereagainst, as per the said Schedule.

8. The name of the petitioner did not figure in any of the said Three Admission Lists.

9. A second (undated) notice was issued by the University, which read thus:

“NOTICE: Postgraduate Admissions 2018

Last opportunity to those students who were unable to report earlier.

The candidates whose names appeared in the first, second or third admission lists for Admission to Postgraduate programmes for the academic year 2018-19, but who were unable to Report during the stipulated period of time at concerned Faculty/Department for verification of their documents, are now being given a last opportunity to seek

admission subject to availability of seats in respective courses and categories.

Such Candidates are required to log in into their Admission Portal and “OPT” online by selecting the option “**RECONSIDER MY APPLICATION**”. The admission portal shall be opened to OPT for the same **from 13th August till 16th August 2018**.

Such candidates will be considered during the fourth Admission List, provided the seats are vacant in the respective Department and category.

The admission will be granted in the order of their names appearing in the respective admission lists as per merit and subject to the availability of seats in their respective categories. It may not be possible to allot such students the colleges of their choice. **Please note that mere OPTING on the portal for “Reconsideration of Admission” does not guarantee admission.**

The admission will depend on the availability of seat in the course and category, provided all other eligibility criteria are fulfilled.”

10. Three more Admission Lists, i.e. the Fourth, Fifth and Sixth Admission Lists, for the M.A. (Political Science) course, were issued by the University on 20th, 27th and 30th August, 2018. The process of verification of documents and approval of admissions, against these three lists, took place between 20th to 23rd August, 2018, 27th to 29th August, 2018, and 30th and 31st August, 2018, respectively. The name of the petitioner did not figure in any of these Admission Lists either.

11. Admissions, to the M.A. (Political Science) course, were closed, by the University, at 11:59 p.m. on 31st August, 2018, i.e. at the stroke of midnight between 31st August and 1st September, 2018

12. The petitioner addressed an email to the Head of the Department, Department of Political Science in the University, on 6th September, 2018, querying as to whether any more Admission Lists would be released, and as to whether the seats had been filled. No response, to the said email was received. The petitioner was, however, informed that the process of admission to the M.A. (Political Science) course in the University stood closed.

13. The petitioner, thereafter, addressed an application, dated 23rd September, 2018, to the University, under the provisions of the Right to Information Act, 2005, seeking information regarding the number of General Category seats, in the M.A. (Political Science) course, being conducted by the University for the academic session 2018-2019, which were still vacant. To this, the petitioner received a response, dated 15th October, 2018, confirming that sixteen seats in the M.A. (Political Science) course conducted by the University were still vacant.

14. It is in these circumstances that the petitioner has approached this Court, invoking its jurisdiction under Article 226 of the Constitution of India. The case of the petitioner, as canvassed in the writ petition is that, when sixteen seats were still lying vacant, the University could not have closed the admission process, to its M.A. (Political Science) course on 31st August, 2018. It is also pointed out, in the writ petition, that admissions had taken place up to the candidate who had secured the 88th rank in the entrance examination for admission to the said course and that the petitioner, as the 92nd

candidate, would have invariably secured such admission, had the admission process not been abruptly brought to an end at the stroke of midnight on 31st August, 2018. The petitioner also contends that the grant, of a second opportunity, to candidates whose names figured in the first three Admission Lists, to again report for admission, and to include their names in the fourth, fifth or sixth Admission Lists, was starkly violative of Clause 1.8 i) iii. of the Admission Bulletin issued by the University, reproduced in para 3 *supra*. These illegal actions, contends the writ petition, have resulted in the infraction of the petitioners fundamental right to education.

15. The writ petition, therefore, exhorts this Court to issue a writ of mandamus, directing the University to admit the petitioner to one of the vacant seats in the M.A. (Political Science) course for the academic session 2018-2019.

16. The University, in its counter affidavit, seeks to contend that the reliance, by the petitioner, on clause 8.1 i) iii. of the Admission Bulletin was misplaced, and that the Bulletin was to be read as a whole. Thus read, the University would seek to rely on the Disclaimer, extracted in para 2 *supra*, whereby the University reserved the right to modify, update or delete any part of the Bulletin without prior notice. It is contended that, by allowing the candidates, whose names were included in the first three Admission Lists, but who had not turned up for counseling, a second opportunity to apply, clause 8.1 i) iii. impliedly stood amended/modified.

17. It is further sought to be contended that, having not challenged the aforeextracted Disclaimer clause, the petitioner could not maintain the writ petition.

18. The University has also sought to treat the petitioner's entire challenge as an "after thought", pointing out that, for the said purpose, the petitioner choose to move this Court only after the issuance of the sixth Admission List.

19. For these reasons, the counter affidavit would pray that the writ petition be dismissed.

20. I have heard Mr. Anjuman Tripathy, appearing for the petitioner and Mr. Mohinder J.S. Rupal, appearing for the University of Delhi, at length.

21. Learned counsel have, essentially, reiterated their respective stands, as canvassed in the writ petition and the counter affidavit.

22. The petitioner has also filed an additional affidavit, in these proceedings, in which it has been pointed out that thirteen of the candidates whose names figure in the fourth admission list, thirteen candidates whose names figure in the fifth admission list and nine candidates whose names figure in the sixth admission list were all "no show" candidates, whose names figure in the first three admission lists, but who had not turned up for admission/counseling.

23. Thus, it is contended that sixty-eight “repeated opportunities” were granted. As sixteen seats are lying vacant, the additional affidavit contends that, had the aforementioned sixty-eight candidates not been granted additional opportunities to apply for admission, and the names in the fourth, fifth and sixth Admission Lists, being picked up from the remaining successful candidates, the petitioner would invariably have secured a place.

Analysis

24. I have had occasion to consider, to adjudicate a similar controversy, relating to admission in the LL.B. course conducted by the University, in my judgment in W.P.(C) 12929/2018 (*Saumya Chopra v. University of Delhi, 2019 SCC OnLine Del 13061*).

25. The dispute in the said case was substantially similar to that arising in the present instance.

26. In that case, too, this Court was concerned with admission to a Post Graduate Course in the University and, as in the present case, with the grant of a second opportunity to candidates who had figured in the first Three Admission Lists, by including their names in the Fourth and Fifth Admission Lists. As in the present case, the case of the petitioners, in that batch of petitions was that, had the candidates, whose names figured in the first three Admission Lists but who did not turn up for securing admission/counseling, not been granted a second opportunity, they would invariably have secured admission to the PG course.

27. As in the present case, Mr. Rupal – who had appeared for the said University in the said batch of matters as well – had placed reliance on the Disclaimer clause, contained in the Admission Bulletin of the University to contend that, by allowing the “no show candidates” to apply twice over, Clause 8.1. i) iii. stood impliedly modified/amended.

28. Reliance had been placed, by Mr. Rupal, in that case, on the judgment of this Court in *Farheen Jahan v. University of Delhi*, 2017 SCC Online Del 10135.

29. Inasmuch as the controversy in the said case is identical to that in the present, I may reproduce, to advantage, my findings, in the said decision, as contained in paras 13 to 25 thereof, which read thus:

“13. The attack, by the petitioners, to the impugned decision of the University, is founded principally on the contention that, in calling, for the fourth and for part of the fifth counselling, students who had been included in the first three Admission Lists, but who had failed to turn up for counselling, the University acted in violation of the Clause, contained in its Admission Bulletin, extracted in para 2 hereinabove.

14. Mr. Rupal has, in response to the first of the above two submissions of the petitioners, i.e., regarding the justification for having invited, in the fourth round of counselling, and, in fact, in part of the fifth round of counselling, students whose names were included in the first three Admission Lists, giving them a second chance, sought to rely on (i) the “Disclaimer Clause”, contained in the Admission Bulletin, preserving the right, to the

University, to modify, alter or delete any part of the Bulletin and (ii) the judgment of a learned Single Judge of this Court in *Farheen Jahan* (supra).

15. Neither of these defences can, however, in my opinion, come to the aid of Mr. Rupal.

16. Insofar as the “Disclaimer Clause”, contained in the Admission Bulletin, is concerned, it empowers the University to “suitably modify, update or delete any part of the Bulletin without any prior notice”. Mr. Rupal has not been able to place, before me, any modification of Clause (iii) of the Admission Bulletin, which expressly prohibited grant of a second chance to candidates who did not turn up, despite their names having been included in the first three Admission Lists issued by the University. The Notice issued by the University after the third Admission List, granting a “last opportunity to those students who were unable to report earlier” is, quite clearly, not a modification, but is, rather, an infraction, of Clause (iii) of the Admission Bulletin. *It can hardly lie in the mouth of the University to argue that, by violating the Clause contained in its Bulletin, the Clause itself stood modified. Neither could the University seek to contend that it could modify the Clause by violating it. It might, perhaps, have been open, to the University, to modify the said Clause, by invoking the afore-extracted ‘Disclaimer Clause’ contained in the Admission Bulletin. That, however, has not happened; instead, the University chose, with impunity, to violate the above-mentioned Clause (iii), by inviting, once again, students whose names figured in the first three Admission Lists, and who had not turned up for counselling. The submission, of Mr. Rupal, that this was necessitated owing to exigencies in which the said students may have been placed, is neither here nor there, depending, as it does, on imponderables, for its acceptance.*

17. Neither, in my view, can Mr. Rupal seek to derive any advantage from the judgment in *Farheen Jahan*

(*supra*). That case dealt with an individual instance in which, owing to her having to take care of her 3-month-old baby who was suffering from severe diarrhoea and vomiting, the student could not report for counselling by the due date. Significantly, this Court, while deciding the said case, relied on an earlier decision, which, like the case before it, dealt with a student who missed out on counselling as he was suffering from a bout of jaundice. The fact that, in such cases, the court, in exercise of its equity jurisdiction, preferred to grant relief to the candidate concerned by allowing her, or him, to attend counselling, cannot afford a *carte blanche* to the University to, in *clear violation of Clause (iii) of its Admission Bulletin, extend, wholesale, to all candidates, who had failed to report for counselling despite their names having been included in the first three Admission Lists, a second chance. Such an act, on the part of the University, partakes of the character of a fraud on its own Admission Bulletin which, needless to say, cannot be tolerated in law.*

18. In view of the above, it becomes unnecessary to address the submission, of Mr. Rupal, that no candidate had a vested right to claim admission merely because seats remained vacant even after the cut-off date for effecting admissions. To that proposition, there can possibly be no cavil. The case of the petitioners is not, however, required to be pitched so high as, in their submission, *had the “no show” candidates of the first three Admission Lists, not been granted a second chance in the fourth, and the fifth Admission Lists, the petitioners would have secured admission, given their merit position.*

19. Addressing, now, the plea, of Mr. Rupal, that the petitioners deserved to be non-suited on the ground of delay and laches, learned counsel for the petitioners has rejoined, correctly, that the mere issuance of the Notice, inviting the “no show” candidates of the first three Admission Lists, to apply again, may not have prompted them to rush to the court, as they were unaware how

many such candidates were there and, whether, even if such candidates were to re-apply, their turn would come, or not. The cause of action, insofar as the petitioners were concerned would, indeed, have arisen only when, after the admission process was over, they found that they had not managed to secure admission. When, at that stage, they came to know that “no show” candidates, of the first three Admission Lists, had occupied the entire fourth Admission List, as well as 8 seats in the fifth Admission List, the petitioners, in my view, certainly had a right to agitate their claim before this Court. They cannot, in such circumstances, be non-suited, either on the ground of delay and laches, or even for the reason that classes have already commenced and continued for two months. Learned counsel for the petitioners has also correctly contended, in this regard, that, though classes commenced in the first week of August 2018, the admission process continued till 31st August, 2018 (admittedly the cut-off date) and that, therefore, there could be no question of the petitioners approaching the Court before 31st August, 2018, when the admission process came to a close, and they found themselves left in the lurch. They have approached this Court within a reasonable period of the said date, i.e. within less than a month and cannot, therefore, be thrown out, without addressing their grievance on merits. Even otherwise, applying the principle of *lis pendens*, the fact that classes may have commenced, and continued for two months, cannot afford a ground to deny relief to the petitioners.

20. It would be appropriate, before closing this judgment, to deal with two of the decisions, on which Mr. Rupal placed reliance, i.e. *Neelu Arora v. U.O.I.*, (*supra*) and *National Board of Examinations v. G. Anand Ramamurthy*, (*supra*).

21. *Neelu Arora* (*supra*) was a case in which the petitioners’ claim was that, against the vacancies which had arisen owing to failure, of the selected candidates to join, a third round of counselling ought to have taken

place, so that they would have secured a chance to obtain admission. The Supreme Court observed that Clause 14 of the Scheme which applied in that case was to the effect that, if the Dean or the Principal of the college concerned did not notify the vacancy position due to non-joining of candidate or candidates in the first round of counselling before the date indicated therein, the seats allotted to the college would be treated as vacant. Para 6 of the judgment is itself a pointer as to why the said decision cannot apply to the facts of the present case:

“When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any shortfall or a certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the Scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the all-India quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad-based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in *Medical Council of India v. Madhu Singh* [(2002) 7 SCC 258] has taken the view that there is no scope for admitting students midstream as that would be against the very spirit

of statutes governing medical education. Even if seats are unfilled, that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind, we do not think any reliefs as sought for by the petitioners can be granted under these petitions.”

(Emphasis supplied)

22. Quite clearly, the italicised words, in the above-extracted passage, from *Neelu Arora (supra)*, indicate that the said judgment cannot be of any assistance, insofar as the controversy in issue in the present case is concerned. Had the petitioners limited their case to a bald claim to the vacancies which had remained unfilled, after the fifth round of counselling was over, and the cut-off date expired, solely on the ground that all unfilled seats ought to have been filled up, then, perhaps, Neelu Arora (*supra*) might have stood in their way. The petitioners do not, however, as has already been noted herein above, pitch their case that high. Their claim is to the vacancies remaining unfilled after the third round of counselling and before the arrival of the cut off date for effecting admissions. Their case is that, had these vacancies not been filled up by inviting the earlier “no show” candidates, they would have succeeded in securing admission, by dint of merit. The reliance, by Mr. Rupal, on *Neelu Arora (supra)* has, therefore, to be rejected as misconceived.

23. Equally misconceived, in the opinion of this Court, is Mr. Rupal’s reliance on *National Board of Examinations (supra)*. In that case, in exercise of the power, reserved in its Admission Bulletin, to effect changes in the schedule of examinations, the National Board of Examinations (NBE) changed the schedule of Examinations from their being conducted twice a year, in June and December, for all disciplines, to conducting of

such biannual examinations only in those streams in which the number of candidates was more than 100. The Supreme Court, while holding this change to be unexceptionable in law, held that the High Court could not have directed the petitioner NBE to act contrary thereto. In the present case, I have already opined, hereinabove, that the University did not exercise the power, vested in it by the Admission Bulletin, to modify the various clauses of the Bulletin but preferred, instead, to act in violation thereof. This, in my view, was wholly impermissible in law.

24. As the petitioners are, thus, found to succeed on facts, it is not necessary to address the various other judicial authorities, on which both sides have placed reliance, and which enunciate principles which are, more or less, well-settled.

25. Resultantly, the act of the University in inviting, for its fourth and fifth counselling, candidates who had not shown up, despite their names having figured in the first three Admission Lists, has to be held as illegal and arbitrary, and starkly violative of Clause (iii) of its own Admission Bulletin. The University would necessarily have, therefore, revisit the said decision. At the same time, it would not be in the interests of anyone – far less, in the interests of justice – to direct the entire exercise of fourth and fifth counselling to be held afresh. Neither would it be in the interests of justice to interfere with the admissions of the students who had not shown up consequent to the first three Admission Lists, despite their names having figured therein, and who obtained admission pursuant to the fourth or the fifth Admission Lists. These students cannot be faulted for having responded to the Notice put up by the University, even if the Notice were, ex facie, contrary to the Admission Bulletin. As sufficient vacancies, apparently, still remain unfilled, both in the General as well as the OBC categories, to accommodate the petitioners before this

Court, creation of any supernumerary seats, for the said purpose, may not be necessary.”

Neelu Arora (supra) and *National Board of Examinations (supra)*, it may be noted, stand reported in (2003) 3 SCC 366 and (2006) 5 SCC 515 respectively.

30. Consequent to the above-extracted findings, I had disposed of the said batch of writ petitions, in para 27 of my judgment, in the following terms:

“27. Resultantly, the present writ petitions are allowed in the following terms:

(i) All such petitioners, in these writ petitions, who would have been entitled to counselling, were the “no show” candidates eliminated from the fourth and fifth Admission Lists, would be counselled and granted admission, to the second semester of the LL.B. course as, owing to no fault of theirs, they have been prevented from attending the first semester and appearing in the first semester examinations.

(ii) This shall not, however, absolve the petitioners from appearing in the first semester examinations altogether. The petitioners would be required to appear in the first semester “repeat” examinations, to be held by the University to cater to students who, for unavoidable reasons, could not appear in the first semester examinations held in November-December 2018.

(iii) Further advancement, of the petitioners, to the third semester, would be dependent on clearing the papers in the first and second semesters.

(iv) These directions are limited to the petitioners in these writ petitions, and would not constitute a precedent to enable students who have yet to approach this Court, to seek similar reliefs.”

31. My judgment in *Saumya Chopra (supra)* was carried in appeal, by University, to the Division Bench of this Court by way of LPA 37/2019 (*University of Delhi v. Aaditya Wadhwa*) (along with connected appeals), which also stand dismissed *vide* order dated 2nd April, 2019, which completely covers the present case. Paras 8 and 12 of the said decision alone may be reproduced thus:

“8. Having heard Mr. Rupal, learned counsel for the Appellant Delhi University, the Court finds that the impugned order of the learned Single Judge balances the equities essentially on the basis that the Delhi University had acted arbitrarily in departing from the conditions stipulated in the bulletin including the ‘no show’ candidates in the fourth admission list depriving the Respondents herein (Petitioners before the learned Single Judge) of a valuable chance of being included in such list.

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12. Court finds no ground to interfere with the impugned judgment passed by the learned Single Judge.”

32. I may note, here, that reliance was placed, by Mr. Rupal, on the judgment of the learned Single Judge of this Court in a batch of writ petition, headed by W.P.(C) 10368/2018 (*Apoorv Shukla v. University of Delhi*). However, in view of the judgment of the Division Bench in LPA 37/2019 (*supra*), it is not necessary to advert to the said decision.

Conclusion

33. Following my decision in *Saumya Chopra (supra)*, as upheld in appeal, the present writ petition is also allowed in the following terms:

- (i) In case, by elimination of the “no show” candidates, from the fourth, fifth and sixth admission lists, the petitioner would become eligible to be counseled and granted admission to the M.A. (Political Science) course, he would be so counseled and admitted to the said course.
- (ii) Inasmuch as the inability of the petitioner to attend the classes in the first semester of the M.A. (Political Science) course is owing to no fault of his, the petitioner would be eligible to appear in the forthcoming examination, irrespective of his having been unable to attend the requisite number of classes. However, further advancement of the petitioner, to the next year of course, would be dependent on his result in the said examination.
- (iii) There shall be no order as to costs.

C. HARI SHANKAR, J

MAY 01, 2019/dsn