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

*Judgment Reserved on: 07.02.2020*

% *Judgment Pronounced on: 26.02.2020*

+ W.P.(C) 12043/2018 & CM APPL.46647/2018

SANA ULLAH SIDDQUI ..... Petitioner  
Through Mr.Chaudhary Ali Zia Kabir and  
Mr.Haider Ali, Advocates  
versus

GURU GOBIND SINGH INDRAPRASTHA  
UNIVERSITY AND ANR. .... Respondents  
Through Mr.Mukul Talwar, Sr. Adv. with  
Mr.Jasbir Bidhuri and Ms.Pallavi,  
Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

1. This writ petition is filed by the petitioner to quash the impugned order dated 09.10.2018 cancelling the admission of the petitioner and for a direction to respondent No.1/Guru Gobind Singh Indraprastha University (*hereinafter referred to as the 'University'*) to allow the petitioner to continue in his course of LLM (R) 2018-19. Other connected reliefs are also sought.

2. The case of the petitioner is that he took admission at the Respondent University in the 5 year integrated Bachelor of Laws BA LLB( Hons.) in the year 2013. The petitioner appeared in the penultimate (9<sup>th</sup>) semester examination in December, 2017. He cleared all subjects except one. In the meantime, the petitioner applied for and appeared in the Common Entrance

Test conducted by the University for admission in Master of Laws 2018-2019 programme. The petitioner scored a rank of 221 and became eligible for admission in the LLM programme.

3. The petitioner was allowed to attend the counseling scheduled by the University for admission to the LLM course. The petitioner informed the University and the University was also aware of the fact that his result of the 10<sup>th</sup> semester was yet to be declared and supplementary examination for the subject 'drafting, pleading and conveyance' was yet to be held. However, the University granted provisional admission to the petitioner on 14.08.2018.

4. It is pleaded that under clause 3.7(1) Part A of the Admission Brochure for the Academic Session 2018-19, the petitioner was to fulfill the eligibility criteria laid down in the Admission Brochure latest by 15.10.2018 and to submit an undertaking to this effect.

The petitioner appeared in the supplementary examination of the LLB which was conducted by the University in September, 2018. It is also pleaded that without waiting for the result of the aforesaid supplementary examination, the University issued the impugned order dated 09.10.2018 cancelling the admission of the petitioner. It is further pleaded that the result of the aforesaid supplementary examination was declared on 16.10.2018 i.e. one day after the cut off date of 15.10.2018. The petitioner cleared the examination with distinction and the result was promptly supplied to the University on 17.10.2018. The petitioner tried to persuade the University to provide admission but all in vain.

5. I may note that in the connected writ petition being W.P.(C) 12021/2018, the respondents have filed a counter affidavit. The learned

senior counsel for the respondents states that the same may be read as counter affidavit for the present writ petition also.

6. As per the said counter affidavit, the petitioner was granted provisional admission to pursue LLM. The petitioner at that time was required to furnish an undertaking which specially provides that all examinations of the qualifying degree shall be over on or before 31.07.2018. An undertaking was also to be given that examination of the qualifying programme of study on the basis of which admission is sought shall be over before commencement of classes in the University for the programme of study in which admission is sought, otherwise the admission shall be cancelled and the full fees deposited shall be forfeited. The Petitioner had filed the necessary undertaking.

7. It is pleaded that in the instant case, the qualifying degree of the petitioner to take admission in LLM programme was BA. LLB. It is a matter of record that the supplementary examinations of qualifying examinations i.e. BA.LLB programme of the petitioner was held in September, 2018 much after the cut off date i.e. 31.07.2018. Hence, it is pleaded that as the complete examination of the petitioner of BA.LLB programme was not held by 31.07.2018, the provisional admission of the petitioner in the LLM programme was cancelled in terms of paras (ii) and (iii) of the undertaking dated 10.07.2018.

8. I may note that on 02.11.2018 this court vide interim order permitted the petitioner to attend classes, if any are held, and directed the University to record his attendance on a provisional basis, if he so attends. It was clarified that this would not create any rights in favour of the petitioner.

9. This court on 30.11.2018, passed another interim order holding that the petitioner is permitted, on purely provisional basis, to appear in the first semester LL.M. examination, scheduled to commence on 3<sup>rd</sup> December, 2018. Relevant paras of the order dated 30.11.2018 read as follows:

“14. In these circumstances, I am of the view that it would be in the interests of justice, the petitioner is permitted, on purely provisional basis, to appear in the first semester LL.M. examination, scheduled to commence on 3<sup>rd</sup> December, 2018. This concession is being granted as purely as an *ad interim* measure keeping in mind that the petitioner is a student and has attended the classes leading up to the said examination. The permission to appear in the examination shall not confer any equities on the petitioner and the result of the examination shall be kept in a sealed cover awaiting the outcome of the writ petition.

15. The Respondent No. 1 - University is directed to issue the requisite Admit Card and to comply with other formalities so that the petitioner would be in a position to appear in the examination.”

10. I have heard the learned counsel for the petitioner and the learned senior counsel appearing for the respondents.

11. Learned counsel for the petitioner has pleaded that the plea of the respondents that examinations were held after prescribed date of 31.07.2018 is misplaced as it is a settled law that the supplementary examination relate back to the main examination. Reliance is placed on the judgment of a Co-ordinate Bench of this court in the case of ‘**Mr. Abhishek Mourya v. Union of India & Ors.**’, W.P.(C) 9817/2019, decided on 14.11.2019 and the judgment of the Division Bench of this court in the case of **University of Delhi v. Varun Kapur, (2011) 179 DLT 549 (DB)**.

The learned counsel for the petitioner further submits that the plea of the respondents that the petitioner was pursuing two regular courses simultaneously is misplaced and misconceived. Giving the supplementary examination does not tantamount to pursuing of two regular courses concurrently. He pleaded that the students who had got compartment in the qualifying exam and the students who do not get compartment are at the same footing and cannot be discriminated while determining eligibility for admission unless such specific conditions are stated in the brochure.

12. The learned senior counsel Mr. Mukul Talwar appearing for the University has reiterated that the petitioner had filed wrong declaration at the time of getting provisional admission where he wrongly declared that he would get the results by 15.10.2018. He also gave an undertaking that the examination of the qualifying programme of study on the basis of which admission is sought shall be over before commencement of classes in the University for the programme of study in LLM. Reliance is placed on the judgment of the Supreme Court in the case of *Maharshi Dayanand University v. Surjeet Kaur*, Civil Appeal No.6807/2008, decided on 19.07.2010 and the judgment of the Division Bench of this court in the case of *Guru Gobind Singh Indraprastha University v. Ram Narayan Tiwari & Anr.*, LPA 625/2017, decided on 07.12.2018 to support his contentions.

13. I may first note the contents of the Admission Brochure for the Academic Session 2018-2019. Relevant portion of the Admission Brochure for the Academic Session 2018-2019 reads as follows:

“3.7 Result Awaited Cases For Engineering, B.Arch, & Professional Programmes (Except for NEET based admissions)

1. Result Awaited / Compartment / Supplementary Cases

- i. All such candidates who have appeared in the qualifying examination (irrespective of the outcome of their final result) will be eligible to appear in the CET 2018-19 and all such candidates will be provisionally admitted in the respective programmes; provided that the examination of the qualifying programme of study on the basis of which admission is sought is over before the commencement of classes in the University for the programme of study in which admission is sought. Further, such provisionally admitted candidates will have to fulfil his/her eligibility as per the eligibility laid down in the admission brochure, latest by October 15, 2018.
- ii. All such candidates whose result is awaited, will have to submit an undertaking/self declaration form at the time of admission/ verification of document (schedule to be notified later) in the prescribed Proforma (to be made available on or before 28<sup>th</sup> February, 2018). Further, in case the candidate is minor i.e. below 18 years of age; in that case, the undertaking shall be counter-signed by his/her parent/guardian. Candidates/ parents/guardians may further note that submission of false affidavit is a punishable offence;”

Hence, in terms of the aforesaid clause of the Admission Brochure, the eligible candidates would be provisionally admitted in the respective programmes provided that the examination of the qualifying programme of study on the basis of which admission is sought is over before the commencement of classes in the University. It is further stated that the provisionally admitted candidates will fulfil their eligibility as laid down in the admission brochure latest by 15.10.2018.

14. I may now look at the impugned order dated 9.10.2018 which has been challenged by the petitioner in the present petition. Relevant portion of

the impugned order dated 09.10.2018 passed by respondent No.1/University reads as follows:

“As already notified in the Admission Brochure and University notification regarding admission in the Academic Session 2018-19, for all such candidates who were provisionally admitted and who failed to submit his/her final result of qualifying degree in the manner as notified, whatsoever, the reason may be, his/her admission will be treated as null and void(cancelled) and the entire fee will be forfeited.”

15. It is manifest from a perusal of the impugned order that the ground for cancellation of the admission of the petitioner is his failure to submit his final result of qualifying degree in the manner as notified. The impugned order gives no other ground for cancellation of the admission.

16. It is, however, noteworthy that in the counter-affidavit filed an additional plea is taken as to why the admission of the petitioner was cancelled. It has been stated in the counter-affidavit relying upon the undertaking dated 10.7.2018 said to have been given by the petitioner that all the examinations of the qualifying degree shall be over on or before 31.7.2018. The relevant part of the undertaking allegedly dated 10.7.2018 reads as follows:-

“(ii) that all the examinations of the qualifying degree are / shall be over on/before 31<sup>st</sup> July,2018.

(iii) I undertake that examination of the qualifying programme of study on the basis of which admission is sought is/shall be over before the commencement of classes in the University for programme of study in which admission is sought, otherwise I understand that my admission shall be cancelled and the full fees deposited shall be forfeit.”

17. Perusal of the above clause of the undertaking shows that it prescribes two stipulations, namely, that the examinations of the qualifying degree shall be over by 31.7.2018 and secondly that the examination of the qualifying programme of study on the basis of which admission is sought shall be over before commencement of classes for the programme of study.

18. In the course of submissions the learned senior counsel for the respondents made an additional submission as to why the petitioner was not qualified, namely, that the petitioner was concurrently pursuing two full time courses in the University.

19. I will first deal with the plea taken by the respondents to cancel the admission in the impugned order dated 19.10.2018. As per the said order the admission of the petitioner was cancelled as the petitioner had failed to submit his final result of the qualifying degree in the manner as notified. The ground is wholly erroneous. The last date for submission of the qualifying degree as per the Admission brochure was 15.10.2018. The impugned order is passed on 9.10.2018. The order was clearly premature. Before expiry of the Stipulated Period i.e. 15.10.2018 to give the results of the qualifying exam the provisional admission of the petitioner was cancelled.

That apart, it is a matter of fact that results of the supplementary examination were themselves declared by the respondents on 16.10.2018. On 17.10.2018 the respondents received the results of the qualifying examination. At best there is a delay of 2 days in submitting the result. That apart, the qualifying examination was also conducted by the same respondent University and they themselves are to be blamed for the two days' delay in submission of the result by the petitioner. Clearly, the

impugned order was passed on erroneous grounds and is liable to be quashed.

20. I may now deal with the plea of the respondents raised in the counter-affidavit as an additional justification for cancelling the admission of the petitioner.

21. In the counter affidavit, the respondent have placed reliance on clauses (ii) and (iii) of the declaration given by the petitioner. As per the declaration given by the petitioner, all examinations of the qualifying degree had to be over on or before 31.07.2018.

22. In this context, I may note that no such plea is raised in the impugned order. Now, the respondents are trying to improve the ground on which they have cancelled the admission of the petitioner for LLM programme. Be that as it may, reference may be had to the judgment of the Division Bench of this court in *University of Delhi v. Varun Kapur* (supra), where the court held as follows:

“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 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, and this in our opinion would be contrary to public interest and thus the compulsion of the situation compels us to be situationalist 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.”

23. Similarly, in *Mr. Abhishek Mourya v. Union of India & Ors.* (supra), the Co-ordinate Bench of this court held as follows:

“7.2. A perusal of the Division Bench judgment in Varun Kapur’s case would show that unless the information bulletin/prospectus makes it crystal clear that the result of the

supplementary exam would not relate to the main exam, the benefit has to be given to the candidate.”

24. It is clear from a perusal of the aforesaid judgments that the result of supplementary examination would normally relate back to the main examination. In this case the main examination was already over by 31.7.2018 and also before classes for the LLM Course had commenced. The compartmental examinations that were held in September 2018 would relate back to the main examination which would be the date for computing the compliance of clauses 2 and 3 of the declaration given by the petitioner.

25. I also cannot help observing that the respondents were obliged to have in the admission brochure clearly stated regarding the status of the students who had obtained compartment in the main examinations. Either the respondents should have categorically stated that they are ineligible for the admission to the course where in the examination of the qualifying degree they have obtained a compartment. No such clarity was admittedly provided in the brochure. The respondents cannot be permitted to bypass/ignore the petitioner in this manner for a brochure that did not clarify the issue properly.

26. Apart from the above, in any case, this ground now urged by the respondent in the counter affidavit i.e. violation of clause (ii) and (iii) of the undertaking cannot be permitted to be urged. This ground to cancel the admission of the petitioner has not been taken in the impugned order. It has been urged now as an after thought as an attempt to improve the basis on which the admission of the petitioner was cancelled. In this context reference may be had to the judgment of the Supreme Court in the case of ***Mohinder***

***Singh Gill vs. Chief Election Commissioner, New Delhi and Others,***  
**(1978) 1 SCC 405** where the Court held as follows:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16]* :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

“Orders are not like old wine becoming better as they grow older.”

Clearly this ground can now not be permitted to be urged by the petitioner.

27. In the course of arguments learned senior counsel for the petitioner did not press the third submission which was made orally regarding concurrent study of two different courses by the petitioner.

28. The matter may be looked at from another perspective. The required qualifying result for BA LLB (Hons.) was available with the respondent by 17.08.2018 with a delay of two days. It would be a very harsh and unjust decision to now scrap the admission after the petitioner has completed his classes for LLM and has also given the exams. There is no reason to uphold the action of the respondent.

29. Accordingly, I, quash the impugned order dated 09.10.2018. The result of LLM of the petitioner, which has been withheld, should be declared. The petitioner would be entitled to all consequential reliefs. Petition stands disposed of.

**(JAYANT NATH)**  
**JUDGE**

**FEBRUARY 26, 2020/v**