

Item No.5

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

17.08.2021
Ct-24

WPA 6857 of 2021
Himanshu Shekhar
vs
University of Calcutta & Ors.

Mr. Avirup Mondal
Mr. Anand Jha
... for the petitioner.

Mr. Nilotpall Chatterjee
Mr. Raja Saha
Mr. Satyaki Banerjee
... for the University of Calcutta.

Mr. Anirban Ghosh
Mr. D. Sengupta
... for the College Authority.

Mr. Avinash Kankani
... for the respondent no. 8.

The petitioner, in response to the B.A.LL.B Admission Notice (Detail), 2020-2021, participated in the online admission process conducted by the University of Calcutta, Faculty of Law and got admitted in the Sureswar Dutta Law College.

The admission notice mentions the eligibility criteria for taking part in the admission process. It mentions that a candidate must pass 10+2 or its

equivalent exam from the Board recognized by the University of Calcutta in the year 2018-2020 and the candidates who passed from the Board other than WBCHSE, ISC, CBSE, Rabindra Mukto Vidyalaya and NIOS must obtain “Equivalence Certificate” from the office of the Registrar, (Equivalence Section) of the University by a written application in plain paper with relevant photo copy of 10+2 mark sheet. The certificate would be required at the time of admission. It was mentioned that it would be safe to obtain the certificate before submission of online application.

The petitioner passed Senior Secondary examination from the Bihar Board of Open Schooling and Examination, Patna in the year 2018.

According to the eligibility criteria laid down by the University of Calcutta the candidate was required to obtain an “Equivalence Certificate” by making an application before the Registrar (Equivalence Section) of the University prior to his admission. The petitioner failed to obtain such “Equivalence Certificate”. The Board from where the petitioner passed his Senior Secondary Examination is not recognized by the University of Calcutta.

The University of Calcutta did not issue the Registration Certificate in favour of the petitioner. The petitioner approached this Court for relief. He was not

allowed to participate in the First Semester examination. He has participated in only two papers of the Second Semester examination pursuant to the leave granted by this Court.

According to the petitioner, as he was duly admitted by the College, he ought to be given a chance to complete his education in the said course from the said College under the affiliating University. It has been contended that there was no fault on his part in getting himself admitted in the College.

In support of his stand the petitioner relies upon two judgments delivered by the Hon'ble Supreme Court of India. The first is *Rajendra Prasad Mathur & Ors. vs. Karnataka University & Ors.*, reported in AIR 1986 SC 1448, and the second is *Ashok Chand Singhvi vs. University of Jodhpur & Ors.*, reported in AIR 1989 SC 823.

In *Rajendra Prasad Mathur (supra)* the Hon'ble Supreme Court held that equivalence has to be decided by the University and it is not a matter of objective assessment or evaluation by the Court. It is for each University to decide the question of equivalence of an examination held by any other Board or University with the examination, which primarily constitutes the basis of eligibility.

The Court was of the opinion that there is no doubt that the appellants were not eligible for admission to the courses of the University and their admission was contrary to the ordinance prescribing the conditions of eligibility.

The Court was of the opinion that it is for each University to decide the question of equivalence and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise. The University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the courses, the syllabus, the quality of teaching or instruction and the standard of examination. It is an academic question in which the Court should not disturb the decision taken by the University.

The Hon'ble Supreme Court endorsed the view taken by the learned Single Judge affirmed by the Hon'ble Division Bench of the High Court rejecting the prayer of the students.

However, considering the fact that the students were permitted to continue their studies in the respective colleges in which they were granted admission, the Hon'ble Supreme Court allowed them to continue solely on the ground that there was no fault on

the part of the students in securing the admission to the colleges who got the students admitted on the basis of the capitation fees paid by them. The Court felt that the University should take appropriate action against the erring colleges because the management of the colleges have not only admitted the students ineligible for admission, but also thereby deprived an equal number of eligible students from getting admitted to the course.

The decision in the case of Ashok Chand Singhvi (supra) has been taken on the same lines. The Court categorically held that assuming that the student was admitted through mistake, he not being at fault, it is difficult to sustain the order withholding the admission of the appellant.

The petitioner presses the fact that he clearly disclosed in his application form the name of the Board from where he passed his 10+2 examination. The petitioner shifts the entire burden upon the College and submits that admission was granted on the basis of the fees paid by him.

The learned advocate representing the University submits that a list of Boards recognized by the University of Calcutta is always available in the official website of the University. The petitioner ought to have checked whether the Board from which he has passed

his 10+2 examination was recognized by the University of Calcutta prior to filing up his application form.

It has also been submitted that the petitioner did not even care to make a formal application before the Registrar (Equivalence Section) of the University to obtain the "Equivalence Certificate" which was required at the time of admission, as the Board from which he passed his 10+2 examination was not recognized by the University of Calcutta.

The portion of the application form which mentions that any false information in the application form will make the candidate ineligible and his candidature will be treated as cancelled has also been placed.

It has been contended that in the second page of the application form the petitioner has signed a declaration to the effect that he passed and obtained 45% marks in the 10+2 level from the Board recognized by the University of Calcutta. The submission of the University is that his candidature ought to be cancelled on the basis of such false declaration submitted at the time of filing of the application form.

A list of Boards which are recognized by the University of Calcutta has also been placed before this Court. The Board from where the petitioner pursued his

Senior Secondary examination does not figure in the said list.

The learned advocate representing the College submits that the petitioner took admission in the College on 13th January, 2021. It has been submitted that during the pandemic period there were only a limited number of staff who took admission of the candidates without verifying and scrutinizing the documents submitted by them. Immediately after it was noticed that the petitioner did not possess the required eligibility criteria for taking admission he/his father was intimated for obtaining the necessary equivalence certificate from the University of Calcutta. The said intimation was given to the father of the petitioner way back in February, 2021. It is the contention of the College that the father of the petitioner assured the College that the necessary paper work will be done.

The petitioner filed the writ petition on 5th March, 2021. It is the specific case of the College that the petitioner did not attend the online classes even for a single day. The Teacher-in-charge of the Sureswar Dutta Law College specifically intimated the Deputy Registrar of the University by a letter dated 11th August, 2021 that during the period classes were held in the online mode but the petitioner never attended any class. The letter of the Teacher-in-Charge of the College

addressed to the Deputy Registrar of the University dated 11th August, 2021 has been taken on record.

The learned advocate for the College submits that the College is agreeable to refund the money that was collected from the petitioner on account of admission charges.

After hearing the submissions made on behalf of both the parties it appears that admittedly the petitioner is ineligible for taking admission in the B.A. LL.B course under the University of Calcutta. The petitioner has not been able to show any scrap of document that the Board from where he pursued his 10+2 examination is recognized by the University of Calcutta. The petitioner has also failed to produce the equivalence certificate from the University of Calcutta.

The only basis on which the petitioner intends to pursue his course are the judgments delivered by the Hon'ble Supreme Court in the matter of Rajendra Prasad Mathur & Ors. (supra) and Ashok Chand Singhvi (supra).

On perusal of the aforesaid two judgments it appears that the Hon'ble Supreme Court was of the opinion to permit the candidates to pursue their courses only because of the reason that in the case of Rajendra Prasad Mathur (supra) the candidates pursued the

course for four long years and in Ashok Chand Singhvi the student pursued the course for more than two years.

In the instant case the petitioner took admission only in January, 2021 and he approached this Court in March, 2021. The petitioner has not joined the online classes even for a single day. He did not take part in the first semester exams and has appeared in only two papers in the second semester, that too, upon obtaining order from the Court.

In my opinion, the case of the petitioner is not akin to the cases which were considered by the Hon'ble Supreme Court. The facts being different, the conclusion will obviously be different.

It was the duty of the College to scrutinize the papers of the candidates at the time of taking admission. It is a pandemic year and the College has categorically stated before this Court that the educational institutions of the State are closed. Due to shortage of staff, papers could not be scrutinized properly at the time of admission, but the moment the discrepancy came to the notice of the College, it was immediately intimated to the guardian of the petitioner.

Accordingly, the College is directed to refund the fees collected from the petitioner which the College was not at all entitled to, as the petitioner was ineligible for taking admission to the course.

The submission of loss of academic year of the student is not a convincing one. The petitioner passed Senior Secondary examination in the year 2018 and got himself admitted in the course in the session 2020-21. He has already lost two valuable years in the interregnum.

No relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

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(Amrita Sinha, J.)