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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 4th August, 2021

Decided on: 24th August, 2021

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W.P.(C) 849/2021 & CM APPL. 2219/2021

YATENDRA SINGH

..... Petitioner

versus

INDIRA GANDHI INSTITUTE OF
PHYSICAL EDUCATION AND
SPORTS SCIENCES & ANR.

..... Respondents

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W.P.(C) 861/2021 & CM APPL. 2265/2021

VIVEK VATS

..... Petitioner

versus

INDIRA GANDHI INSTITUTE OF
PHYSICAL EDUCATION AND
SPORTS SCIENCES & ANR.

..... Respondents

Present: Mr. Swapnil Gupta, Advocate for the Petitioners.
Mr. Mohinder J.S. Rupal & Ms. V. Bhawani, Advocates
for the Respondents.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. By way of these petitions under Article 226 of the Constitution, the petitioners seek directions upon the respondents to permit them to continue in the B.Sc. (Physical Education, Health Education and Sports) course [“the B.Sc. course”] at the respondent No. 1-Indira

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NAGPAL

Signing Date: 26.08.2021

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Gandhi Institute of Physical Education and Sports Sciences [“the Institute”]. As the writ petitions involve the same issue, they have been heard together and are disposed of by this common judgment.

Facts

2. The Institute is affiliated to the respondent No. 2-University of Delhi [“the University”]. The petitioners applied for admission to the B.Sc. course in the Economically Weaker Section [“EWS”] category for the academic year 2020-2021. They participated in the University’s entrance test conducted by the National Testing Agency. The results of the entrance test were published on 10.09.2020.

3. The Institute published its first admission list on 07.11.2020, wherein the petitioners were shown as having been selected for admission. In the list pertaining to the EWS category, Vivek Vats¹ [“VV”] is shown at Serial No. 6 with rank 95, and Yatendra Singh² [“YS”] is shown at Serial No. 10 with rank 111. The petitioners submitted the documents required in terms of the notice dated 07.11.2020 and paid their fees. They also started attending classes online. Selected screenshots have been placed on record in support of this contention.

4. From the documents placed on record by the respondents, it appears that the respondents later discovered some error in the merit list published by the Institute. A meeting of the University’s Admission Committee [“the Admission Committee”] was held on 05.12.2020, in which it was decided as follows:

¹ The petitioner in W.P.(C) 861/2021

² The petitioner in W.P.(C) 849/2021

“5. Cancellation of erroneous admission of Course BSc PE, HE & S

The Admission Committee was informed that IGIPESS had advertently committed an error while publishing the first Admission List. As a result, some students were wrongly admitted. The institute had requested cancelling the admissions of such applicants.

The Admission Committee recommended that the admission of these applicants be cancelled based on the recommendation of IGIPESS and IGIPESS to come out with a correct admission list.”

5. Pursuant to this decision, on 24.12.2020, the Institute issued an “Admission Notice” which stated as follows:

“ADMISSION NOTICE

B.SC (PE, HE & S) – 2020=21

The Applicants selected in the Revised First Admission List (according to category) for Admission to B.Sc (PE, HE & S) course 2020-21 are required to deposit their admission fees 26rd & 27th December, 2020 (till 02.00 PM) through the admission Portal of University of Delhi.

The applicant shall be required to produce the following documents in original with two-attested photocopies (when college is offline / college is open for students)

xxxx

xxxx

xxxx

- Note : 1. Candidates (in this list) who have submitted their admission fee in the prior list Published on 12.11.2020, need not to submit the admission fee again. (Next List will be displayed on 28/12/2020)***
- 2. In case, any documents are found false at the time of physical verification of certificate, the admission is liable to be cancelled”***

6. The admission list published alongwith this notice did not contain the names of the petitioners. According to the petitioners, they became aware of their removal from the Institute when their names did not appear in a section-wise list of students which was published on 04.01.2021. YS received no intimation of the publication of this revised list. VV was also informed by an email dated 07.01.2021 that his admission in the B.Sc. course stood cancelled as he did not fall under the merit list. However, he was offered admission in three alternative courses in Shyamlal College, which is also affiliated to the University.

7. It is in these circumstances that the petitioners have approached this Court for a direction that they may continue to study in the B.Sc. course at the Institute. VV has also sought quashing of the communication dated 07.01.2021 issued to him.

8. By an *ad interim* order dated 25.01.2021, in view of the fact that the petitioners had already started attending online classes, the respondents were directed to maintain *status quo* with regard to the admission of the petitioners in the Institute.

Submissions of counsel

9. Mr. Swapnil Gupta, learned counsel for the petitioners, submitted that the cancellation of the petitioners' admission is on grounds which are not attributable to the petitioners at all. He referred to the counter affidavits filed by the University in which the defence taken is that the University found errors in the merit list on the basis of which the first and second admission lists were generated. While Mr. Gupta stated that the petitioners were not in a position to join

issue with regard to the merit list, he submitted that the petitioners' continuation in the Institute ought not to be disturbed as there are, in any event, several vacant seats in the B.Sc. course.

10. Mr. Gupta cited three judgments of the Supreme Court in support of his contention that equitable relief of this nature can be granted to the petitioners: *Rajendra Prasad Mathur and Others vs. Karnataka University and Another*³, *A. Sudha vs. University of Mysore and Another*⁴ and *Ashok Chand Singhvi vs. University of Jodhpur and Others*⁵.

11. Mr. Mohinder J.S. Rupal, learned counsel for the respondents, resisted the relief sought by the petitioners on equitable grounds. He contended that while the error was undoubtedly that of the respondents, the petitioners were not entitled to relief as they had admittedly not qualified on merit.

12. In the counter affidavits filed by the University, it has tabulated the manner in which the error has occurred. It appears that the entrance test marks originally attributed to the petitioners [before the first admission list was issued on 07.11.2020] were much higher than the marks actually obtained by them. According to the counter affidavits, the overall ranks of VV and YS were 523 and 569 respectively, and not 95 and 111, as originally computed. Similarly, their ranks in the EWS category were 31 and 35 respectively, instead of 9 and 14. In contrast, the last candidate admitted to the B.Sc. course in the EWS category had secured an overall rank of 487 and category

³ (1986) Supp SCC 740

⁴ (1987) 4 SCC 537

⁵ (1989) 1 SCC 399

rank of 25. Mr. Rupal referred to the minutes of the meeting of the Admission Committee dated 05.12.2020 to submit that due procedure had been followed in revising the admission list.

13. Mr. Rupal argued that, in addition to the petitioners, there were five other candidates whose admissions were similarly vitiated by error. All the candidates, including the petitioners, were given the option of taking admission in other colleges of the University for which they were eligible. Mr. Rupal therefore submitted that the respondents have gone out of their way to make amends for the error and minimize the prejudice that may be caused to the petitioners. According to Mr. Rupal, the grant of relief to the petitioners would be a perpetuation of an illegality, wherein students lower down in the merit list would be given admission to which they were otherwise not entitled.

14. In response to Mr. Gupta's submission that there are, in fact, vacant seats in the B.Sc. course for the 2020-2021 academic session, Mr. Rupal confirmed this position, but submitted upon instructions that the vacancies had arisen after the close of admissions on 31.12.2020. He made it clear that as on 31.12.2020, all the seats had been filled.

15. Mr. Rupal distinguished the three judgments of the Supreme Court cited by Mr. Gupta on the ground that in all those three cases, the Supreme Court had, in fact, confirmed that the petitioners were not eligible for admission to the courses in question, but had permitted the students to continue in view of contrary representations made to them by the authorities.

16. Mr. Rupal cited the judgment of the Supreme Court in *Sneh Prabha and Others vs. State of U.P. and Others*⁶ to submit that a writ cannot be issued on the ground that a benefit has been wrongly given to other persons. The judgment of this Court in *Madhu Joshi vs. University of Delhi and Others*⁷ was placed to emphasise that there can be no estoppel against the law, and an inadvertent mistake on the part of the University cannot lead to a right of the candidate to retain her admission. In *Nand Kishore Garg vs. Jitender Singh Tomar and Others*⁸ also, a Coordinate Bench has held that making an application contrary to the applicable rules does not set up a case for grant of equitable relief. Mr. Rupal finally referred to the Supreme Court judgment in *Maharshi Dayanand University vs. Surjeet Kaur*⁹ to argue that no right can be conferred upon a student even if the University has wrongly permitted her to take examinations of a particular course.

Analysis

17. It appears from the submissions of learned counsel for the parties that the factual position is clear. The petitioners were granted admission to the B.Sc. course upon an error committed by the Institute. Had the Institute conducted the admissions correctly at the first instance, they would not have been admitted. However, there is no allegation of any wrongdoing on their part. Although the University offered them alternative courses for which they were eligible, and to which they would have secured admission on their

⁶ (1996) 7 SCC 426

⁷ (2018) SCC Online Del 10963 [W.P.(C) 8259/2018 decided on 09.08.2018]

⁸ (2020) SCC Online Del 208 [El. Pet. 2/2015 decided on 17.01.2020]

⁹ (2010) 11 SCC 159

own merit, they were not agreeable to give up the seats to which they had been granted admission. They had already commenced classes when their admissions were cancelled. [Although the notice dated 24.12.2020, by which the revised admission list was published, does not speak of cancellation of admissions already granted, the attendant circumstances, including the communication dated 07.01.2021 addressed to VV, show that this was the intent of the University.] The cancellation of the admissions was not preceded by any notice to the petitioners. Indeed, they may not have had much to say as the action was predicated not upon any default on their part, but upon an error at the University's end. The petitioners have been studying in the B.Sc. course since, and factually, there are vacancies against which they can be accommodated.

18. The question to be considered in these circumstances is whether the petitioners ought to be permitted to continue or whether they are required to seek admission afresh in the course of their choice. The three judgments cited by Mr. Gupta suggest that it is possible for the writ court to exercise its equitable jurisdiction in their favour.

19. In *Rajendra Prasad Mathur*¹⁰, the question before the Supreme Court concerned cancellation of admissions to engineering courses in Karnataka University. During the pendency of the writ petitions before the High Court, the petitioners were permitted to continue their studies in the college. The writ petitions were thereafter dismissed by the writ court and the Division Bench. Before the Supreme Court, there was no challenge to the eligibility conditions, and the Supreme Court also

¹⁰ Supra (note 3)

rejected their contention that their qualifications, in fact, rendered them eligible. The view taken by the High Court was therefore affirmed by the Supreme Court. However, the Court directed as follows:

“8. We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective engineering colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective engineering colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the engineering degree course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the engineering colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year BSc examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year BSc examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the engineering colleges which admitted the appellants because the Principals of

these engineering colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these engineering colleges. We would therefore, notwithstanding the view taken by us in this Judgment, allow the appellants to continue their studies in the respective engineering colleges in which they were granted admission. But we do feel that against the erring engineering colleges the Karnataka University should take appropriate action because the managements of these engineering colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the engineering degree course. We also endorse the directions given by the learned Judge in the penultimate paragraph of his Judgment with a view to preventing admission of ineligible students.”¹¹

20. In *A. Sudha*¹², the judgment in *Rajendra Prasad Mathur*¹³ was followed in the case of a candidate who had been admitted to the MBBS course contrary to the eligibility criteria. The judgment in *A.P. Christians Medical Educational Society vs. Government of Andhra Pradesh*¹⁴, which was cited by the University, was distinguished on the ground that it concerned a case where students were themselves to blame because they sought admission in the concerned college despite the warning of the University that the college was not affiliated to it. In paragraph 18 of the judgment, the Court held as follows:

“18. The facts of the instant case are, more or less, similar to the *Rajendra Prasad Mathur* case [1986 Supp

¹¹ Emphasis supplied.

¹² Supra (note 4)

¹³ Supra (note 3)

¹⁴ (1986) 2 SCC 667

SCC 740 : AIR 1986 SC 1448:] . It has been already noticed that on the appellant's query, the Principal of the Institute by his letter dated 26-2-1986 informed her that she was eligible for admission in the First Year MBBS course. It was, inter alia, stated in the letter that the candidate should have obtained 50 per cent marks in the optional subjects in the B.Sc. examination. There is no dispute that the appellant had obtained 54 per cent marks in those subjects in the B.Sc. examination. The appellant was, therefore, quite innocent and she was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute in the said letter in regard to the eligibility of the admission in the First Year MBBS course. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the MBBS course. Prima facie it was the fault of the Principal of the Institute but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission to the MBBS course, was on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS course for the academic year 1985-86, which to some extent suffer from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajendra Prasad Mathur case [1986 Supp SCC 740 : AIR 1986 SC 1448:] while we dismiss the appeal, we direct that the appellant shall be allowed to prosecute her studies in the MBBS course, and that her result for the First Year MBBS examination be declared within two weeks from date. ”¹⁵

21. In *Ashok Chand Singhvi*¹⁶, the Supreme Court did not accept the explanation of the concerned university that the appellant had been admitted by mistake. However, it went on to hold that, even on the

¹⁵ Emphasis supplied.

¹⁶ Supra (note 5)

assumption that the admission was by mistake, the appellant was not at fault, and therefore the principles of the judgment in *Rajendra Prasad Mathur*¹⁷ should be followed.

22. Mr. Rupal sought to distinguish these cases on the ground that in both *A. Sudha*¹⁸ and *Ashok Chand Singhvi*¹⁹, the applicants, who were later found ineligible for admission, had received specific assurances from senior functionaries of the concerned universities that they were eligible. Mr. Rupal submitted that no such assurances were found in the facts of the present cases.

23. This distinction urged by Mr. Rupal is misplaced in the facts of the present cases. It may first be noticed that all the three judgments concern eligibility. The Supreme Court found [at least in *Rajendra Prasad Mathur*²⁰ and *A. Sudha*²¹] that the petitioners therein were, in fact, ineligible for admission. It nevertheless permitted them to continue in the courses to which they had been admitted. In *Ashok Chand Singhvi*²² also, even on the assumption that admission was granted mistakenly, the Court took the same view. The present case is not one of eligibility. There is no dispute that the petitioners were eligible for the B.Sc. course, and there was no doubt in this regard which would have occasioned a query or a response from the authority. They simply applied and were accepted. An applicant in such a situation cannot possibly be aware of his/her position in the

¹⁷ Supra (note 3)

¹⁸ Supra (note 4)

¹⁹ Supra (note 5)

²⁰ Supra (note 3)

²¹ Supra (note 4)

²² Supra (note 5)

merit list, which could give some ground for doubt or enquiry, to which the respondents would have had occasion to make any representation to the petitioners, one way or the other. To that extent, the admission list itself is the only statement expected from the respondents, which was in favour of the petitioners.

24. Based on the aforesaid judgments, the relief sought by the petitioners is merited. In fact, as noted above, the Supreme Court granted relief to the petitioners in those cases even though they were ineligible for admission. To that extent, the present petitioners stand on a better footing. There is no grievance as to their eligibility. They have not been accused of any wrongdoing. As far as they are concerned, they were admitted in due course and started attending classes. Today, there are vacancies against which they can be adjusted for the year in which they took admission. Due to the lapse of time, the University will also not be able to take admissions to the vacant seats even if the petitioners are denied the relief sought.

25. Turning now to the judgments cited by Mr. Rupal, the principle laid down in paragraph 8 of *Sneh Prabha*²³ is only that Article 14 does not contemplate the concept of negative equality, i.e. a petitioner cannot seek relief only because the benefit was wrongly conferred upon someone else. It is in this context that the Supreme Court has observed that the equality clause does not extend to perpetuate a wrong. The petitioners in the present cases do not, however, seek relief on the basis of any such claim of equality, and the judgment has no application whatsoever.

²³ Supra (note 6)

26. In *Maharshi Dayanand University*²⁴, the concerned student took admission to the B.Ed. course despite the fact that she was pursuing a regular M.A. course. This was contrary to the Rules of Examination. The finding is that the student had applied for admission in the B.Ed. course without disclosing the fact that she is pursuing a regular course. The Court has specifically noted as follows:

“14. It is worth noting that the respondent at the time of filling up of her form for BEd course at the first instance had not made any disclosure about her pursuit of postgraduate student (sic studies) in Political Science.”

The Court took the view that the Rules of Examination of the University did not permit her to apply for admission even in the B.Ed. correspondence course, and the directions of the National Consumer Disputes Redressal Commission to the University to issue the degree to her were therefore set aside. The decision of the Court turns on the statutory prohibition contained in the Rules of Examination, and on the conduct of the respondent therein. In the present cases, neither was there a statutory prohibition to the admission of the petitioners, nor has any default on their part being alleged or demonstrated.

27. The judgment of a coordinate bench in *Madhu Joshi*²⁵ dealt with a case where the petitioner was admitted to the M.A. (Sociology) course in the “merit category”, although she did not have an undergraduate degree with Honours in Sociology. The Court held, in the face of the published eligibility criteria, that she did not meet the required qualification. It may be noted that in that case, a submission

²⁴ Supra (note 9)

²⁵ Supra (note 7)

had also been advanced on behalf of the University that it was misled by the manner in which the petitioner had stated her qualifications in her application for admission. In the present cases, the question of eligibility does not arise and therefore, the principle that admission cannot be granted contrary to the statute does not come in the way.

28. The judgment in *Nand Kishore Garg*²⁶ deals with an election petition. One of the questions raised was regarding the qualification of the elected candidate who claimed to have an LL.B. degree and had enrolled as an Advocate. The Court found that he did not possess the requisite qualifications for admission to the LL.B. course, and relied *inter alia* on the decision in *Maharshi Dayanand University*²⁷ and the Division Bench decision of this Court in *Bidisa Chakraborty vs. Indira Gandhi National Open University*²⁸. The decision again turns on the eligibility criteria and on the fact that the candidate had taken admission to the LL.B. course although he was aware that he was not a graduate as the B.Sc. degree relied upon by him was “non-existent and fabricated”. The present cases are distinguishable on all these grounds.

29. For the aforesaid reasons, I am of the view that the petitioners’ admission in the B.Sc. course at the Institute ought not to be disturbed at this stage.

Conclusion

30. The writ petitions are therefore allowed, to the extent that the respondents are directed to permit the petitioners to continue in the

²⁶ Supra (note 8)

²⁷ Supra (note 9)

²⁸ (2014) SCC Online Del 3910 [LPA 473/2014 decided on 01.08.2014]

B.Sc. course at the Institute. The communication dated 07.01.2021 addressed by the University to VV is also quashed. The pending applications also stand disposed of.

31. There will be no orders as to costs.

PRATEEK JALAN, J.

AUGUST 24, 2021

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