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

% *Decided on 17th March, 2021*

+ LPA 67/2021

PARTH SARTHI YADAV Appellant
Through: Mr. Apurb Lal and Mr. Raghav
Parwatiyas, Advs.
versus

ALL INDIA COUNCIL OF TECHNICAL EDUCATION & ORS.
..... Respondents
Through: Mr. Anil Soni, Standing Counsel with
Mr. Devesh Dubey, Adv. for R-1

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, J (Oral)**

CM APPL. 5678/2021(exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

CM APPL. 5679/2021-DELAY OF 20 DAYS IN FILING THE APPEAL

This application has been preferred under Section 5 of the Limitation Act for condonation of delay of 20 days in preferring the LPA.

Having heard the learned counsels for both sides and looking into the

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reasons stated in this application, there are reasonable reasons for the condonation of delay. We, therefore, condone the delay in filing LPA.

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1. The present appeal has been filed under Section 10 of the Letter Patent Appeal Act of Delhi High court, seeking to set aside the impugned order dated 21.12.2020 passed in W.P.(C) No. 4616/2020 and further directions to the respondents to allow the appellant to appear in one paper i.e., Applied Mathematics II.

2. Briefly stating, the undisputed facts are as under: -

I. The appellant was pursuing the course of Diploma in Civil Engineering with Respondent No. 3 i.e., Chotu Ram Rural Institute of Technology. As per the curriculum, a candidate has to pass 36 papers for being awarded the Diploma. The course is for three years. As per the instructions issued by the respondent No.2 Board of Technical Education, a candidate can clear all the papers within two years beyond the period of three years.

II. It is further an admitted case that the appellant could not clear all the papers within the 2 years, over and above the 3 years. Even after the period of 2 years the appellant was left with three papers namely:

- a) Hydraulics,
- b) Applied Mathematics-II and
- c) Element of Electrical Engineering.

III. Since the appellant was not able to clear the above 3 papers within the 2 years over and above the 3 years, a mercy chance was given by

respondent No.2. A committee had been formed under the Chairmanship of JD (Plg.) to examine the eligibility and norms for the students to appear in the Mercy Examination of December, 2018 and with the subsequent approval of Hon'ble Dy. CM/Minister of Education and the following was decided:

a) Only one chance will be given to candidate to pass including theory and practical examination of their full Diploma course.

b) In future, no such opportunity will be provided to the students who are eligible to appear in the mercy chance examination held in December-2018.

c) No such opportunity on any ground shall be provided in future, except in the condition of natural calamities and disaster.

d) This will not be treated as precedent for future.

3. In the mercy chance, the petitioner appeared in the examination of the three papers. It is also admitted that the appellant cleared the other 2 papers namely, Hydraulics and Elements of Electrical Engineering but failed in the Applied Mathematics-II paper. Since the appellant did not clear the paper of Applied Mathematics-II, consequently he was not awarded a diploma. It is in this view of the matter, that the appellant filed W.P.(C) No. 4616/2020 seeking the following prayers: -

“(a) Issue of writ of mandamus or any other appropriate writ or directions, thereby directing the Respondents to

allow the Petitioner to appear for his paper i.e. Applied Mathematics-I1 under mercy chance.

(b) Direct the Respondents No.1 & 2 to provide marks sheet for the papers which Petitioner appeared in mercy chance.

(c) Pass such other and further order as this Hon'ble Court deems fit and proper in the interest of justice.”

4. The case of the appellant in the writ petition was that on 19.12.2018, the petitioner was suffering from high fever, when he appeared in the examination for Applied Mathematics-II, and within one and a half hours of his examination, he fainted and was rushed by the guard and his family members to the doctor.

5. A medical certificate dated 26.06.2019 was also annexed, certifying that the appellant was under doctor's treatment from 18.12.2018 to 19.12.2018 for viral fever.

6. The learned Single Judge considered the entire material before him as well as the counter-affidavits filed by the AICTE as well as respondent No.2 i.e., Board of Technical Education. The learned Single Judge further, relied on the additional affidavit filed on 06.11.2020 by respondent No.2 wherein, respondent No.2 has categorically stated on an affidavit that the appellant had not fainted during the examination. The affidavit further, annexed the report of the invigilator certifying the said fact. In addition, respondent No.2 also filed copy of the answer sheets of the petitioner for Applied Mathematics-II. As per the answer sheets, it was borne out that out of 18

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questions, the appellant had answered 17 questions and secured 11 marks in total. The only question left by the appellant was of 2 marks and the minimum pass percentage was 40%.

7. The learned Single Judge held that even assuming that the appellant had attempted the 18 questions, he could have added at best 2 more marks taking his total to 13 which still would not have made the pass percentage of 40%. In this view of the matter, the learned Single Judge was pleased to dismiss the writ petition. In addition the learned Single Judge also opined that the appellant had approached the Hon'ble Court with unclean hands and the record of the appellant produced by the respondent belied the case set up by the appellant in the writ petition.

8. The appellant has challenged the said order and the only ground addressed before us was "Sympathy and the Career of the Appellant".

9. The learned counsel for the appellant invoked this court's sympathy and urged us that considering the fact, that the appellant belongs to a poor family and has already cleared 35 papers out of 36 papers, an opportunity to appear in one paper must be permitted to save his future.

10. We have carefully gone through the papers of the writ court and considered the submissions for the learned counsel for the appellant.

11. The ground of sympathy has been invoked by counsels as well as parties regularly. We may quote of the conversation between Justice Oliver

Wendell Holmes and his friend Judge Learned Hand.

“One day after enjoying lunch together, two of the twentieth century’s more esteemed jurists, Justice Oliver Wendell Holmes and Judge Learned Hand, were parting ways when Judge Hand turned towards the Justice and exclaimed, “Do justice sir, do justice.” Holmes promptly chided Hand: “My job is not to do justice, your honor. Rather, my job is to apply the law”.¹

12. We may also refer to the observations of the Hon’ble Apex Court in **Ashok Kumar Thakur vs University Of Himachal Pradesh & Ors.**²

“5. Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do.”

13. We also rely on the observations of this Hon’ble Court in **Guru Nanak Dev University vs. Parminder Kr. Bansal,**³

“7. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the

¹ Justice and the Rule of Law: A Contradiction in Terms? By Bobby R Baldock (also quoted by Hon’ble Mr. Justice Rajiv Shakti in W.P.(C) No. 5960/2012 in order dated 01.10.2012.

² 1973 2 SCC 298.

³ [1993] 4 SCC 401

eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates that by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions.”

14. Bearing this principle in mind and to apply the law, suffice it to say that there is no provision under the rules of respondent No.2 Board of Technical Education for giving another chance on sympathetic grounds. As per para 16.5 of Compendium Rules of respondent No.2 Board of Technical Education the time limit for completion of diploma is as under: -

“A student admitted to any diploma course will be required to complete the Diploma within a period of not exceeding two years plus the course duration. This period shall be irrespective of any reason for not taking the examination of the Board, or, detention on the basis of shortage of attendance / sessional or cancellation/disqualification from exam, for adopting the unfair means. No extension beyond the prescribed period will be permissible and the student will not be allowed to take any examination of the Board beyond this prescribed period. ”

15. In addition, Para 18 of the Compendium Rules state as under: -

“A candidate who does not complete his diploma/ post diploma/ certificate programme within the course duration plus two years shall stand disqualified for the award of Diploma/ Post Diploma/ Trade Diploma.”

16. Despite the appellant having failed to clear all his 36 papers within the said period of 5 years (3+2), one more chance was given to the appellant as a mercy chance but the appellant still failed to clear the paper for Applied Mathematics II.

17. There is no provision in the Compendium of Rules and Regulations of respondent No.2 Board of Technical Education which permits a “Second Mercy Attempt.” In addition, as held by the learned Single Judge the case set up by the appellant in the writ petition of him running high temperature and having fainted also is belied by the documents on record.

18. In view of the matter, we are of the opinion there is no infirmity in the order dated 21.12.2020 passed by the learned Single Judge in W.P. (C) No.4616 of 2020.

19. In view of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the learned Single Judge while deciding W.P.(C) No.4616/2020 vide judgement and order dated 21.12.2020. Hence there is no substance in this LPA and the same is dismissed.

CHIEF JUSTICE

JASMEET SINGH, J

MARCH 17, 2021

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